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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 540

UNITED STATES OF AMERICA, PETITIONER,

vs.

HARRY GRAY NUGENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 9, 1953

CERTIORARI GRANTED MARCH 16, 1953

SUPREME COURT OF THE UNITED STATES

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1 In United States District Court for the Southern District of New York

UNITED STATES

v/s.

HARRY GRAY NUGENT

To 50 Sec. 462, U. S. Code unlawfully failed and neglected to take one step forward under the Universal Military Training and Service Act.

1 Count.

DOCKET ENTRIES.

PROCEEDINGS.

2/29/52—Filed indictment.

3/5/52—Pleads not guilty. Bail continued. Bail \$1,000. to be renewed by 4 P. M. today.—Bondy, DJ. Filed Notice of Appearance—Herman Adlerstein, 79 Wall Street, N. Y. City Attorney. Filed Recognizance dated 3/5/52—\$1,000. National Surety Corp., Surety.

4/21/52—Trial begun and concluded before Judge Edward Weinfeld. Jury Waived. Court finds defendant "guilty".

4/21/52—Filed Judgment—Two and one-half years at a place of confinement to be designated by the Attorney General. Remanded—Weinfeld, J.

4/21/52—Issued Commitment and copies.

4/25/52—Filed Notice of Appeal

4/30/52—Filed election not to commence service of sentence

4/29/52.

2 In United States District Court

[Title omitted]

INDICTMENT.—Filed February 29, 1952

The Grand Jury charges:

1. On or about the 21st day of February, 1952, at the Southern District of New York, Harry Gray Nugent, the defendant did unlawfully, wilfully and knowingly fail and neglect to perform a duty required of him under and in execution of the Universal Military Training & Service Act, and the Rules and Regulations duly made pursuant thereto, in that at the time and place aforesaid, the defendant did fail and neglect to take one step forward, after it

had been determined that the defendant was fully qualified for induction, and which would have constituted the defendant's induction into the armed forces of the United States (Title 50, Appendix, Section 462, United States Code).

WILLIAM R. WHITE
For Plaintiff

MYLES J. LANE
U. S. Attorney

PLEA OF NOT GUILTY

March 5, 1952—Defendant pleads not guilty.

3 In United States District Court

[Title omitted]

TRANSCRIPT OF PROCEEDINGS.

Before: HON. EDWARD WEINFELD, *District Judge*.

New York,
April 21, 1952,
10:30 o'clock a. m.

APPEARANCES:

MYLES J. LANE, Esq., United States Attorney, for the Government; by LOUIS GROSSMAN, Esq., Assistant United States Attorney.

HERMAN ADLERSTEIN, Esq., Attorney for Defendant.

Mr. GROSSMAN: At the outset, your Honor, I would like to state, after consulting with defendant's counsel, that they have agreed, defendant and his counsel have agreed to waive a jury trial. Accordingly, I have prepared a stipulation which they have just signed, and the Government has signed as well.

I would like your Honor to approve the same and advise the defendant of his rights in open court.

The Court: Who is the defendant?

(The defendant stood up.)

4 The Court: Are you Harry G. Nugent?

The Defendant: I am, your Honor.

The Court: Did you sign this waiver of trial by jury?

The Defendant: I did.

The Court: Do you understand that it is your absolute right to have the trial upon the indictment by a jury of twelve?

The Defendant: I do.

The Court: You waive your right to a trial by jury?

The Defendant: I do.

The COURT: You do so freely and voluntarily?

The DEFENDANT: I waive it voluntarily.

The COURT: Has anybody made any promises to you?

The DEFENDANT: No promises were made.

The COURT: Were any inducements or offers made to you to waive trial by jury?

The DEFENDANT: No, none whatever.

The COURT: It is your preference that you be tried by the Court without a jury instead of by a jury of twelve?

The DEFENDANT: That is right.

The COURT: I will approve it.

OFFERS IN EVIDENCE

Mr. GROSSMAN: If the Court please, I now offer the stipulation of the waiver of the jury as Government's Exhibit 1.

(Marked Government's Exhibit 1.)

Mr. GROSSMAN: If the Court please, I have also agreed and stipulated with Mr. Adlerstein, and we would like the same now to be contained in the record, that the defendant now on trial, namely, Harry Gray Nugent, is the same person named in the indictment, and that the cover sheet which I now offer of the Selective Service System contains all of the papers in this man's file, and that the papers are accurate, and that there is no objection to that being received in evidence at this time.

Mr. ADLERSTEIN: That is consented to. There is no objection.

5 Mr. GROSSMAN: I now offer this cover sheet as Government's Exhibit No. 2. I will subsequently offer the separate papers which I deem important and relevant as subdivisions of Exhibit 2, and the defendant may on his case offer whatever papers he deems relevant to your Honor's particular attention. However, for the record, we put the whole cover sheet into evidence.

(Marked Government's Exhibit 2.)

Mr. GROSSMAN: The defendant's attorney has also stipulated with the Government that the defendant in this case, namely, Harry Gray Nugent, was duly ordered to report for induction on February 21, 1952. He did report to the induction station.

However, he refused and neglected and failed to take the one step forward which would have constituted his induction into the armed forces of the United States.

Mr. ADLERSTEIN: That is admitted.

The COURT: Was that February 21, 1952?

Mr. GROSSMAN: That is correct, Your Honor.

I would like now to offer as Government's Exhibit 2-A the Selective Service questionnaire of the registrant, which is dated February 2, 1949. This questionnaire was filled out by the registrant and signed by him. I would also like to call the Court's attention to Series 14 of the questionnaire, wherein the defendant does allege and sign his name that he is conscientiously opposed to war and that he is a conscientious objector.

I would also like particularly to call the Court's attention to the same page where the registrant made a statement regarding his classification. On that line, in defendant's own handwriting, this statement appears:

"Due to religious belief, I will only serve as a non-combatant."

And on the last page of this questionnaire which I will constantly make reference to are the minutes of action taken by the local board, appeal board in the case of this registrant. The minutes are entered thereon, which shows the various steps that were gone through in classifying this man; and various appeals that were taken in his case.

(Marked Government's Exhibit 2-A.)

The COURT: Where is this SS Form 150?

Mr. GROSSMAN: That is my next exhibit, if your Honor please.

The COURT: All right.

Mr. GROSSMAN: That form is sent only to registrants that sign their names on Series 14 as conscientious objectors. It is a special form.

The COURT: He did sign his name?

Mr. GROSSMAN: Yes, and it was sent to him. That is the next exhibit.

The COURT: All right.

Mr. GROSSMAN: I now offer Government's Exhibit 2-B, SS Form 150, known as the special form for conscientious objector. It is a more detailed questionnaire concerning the basis and reasons for his conscientious objection to war, and the defendant in this case also presented certain written statements by himself, certain printed documents which are all part of this Exhibit 2-B.

Mr. ADLERSTEIN: May we have the date on that, please?

Mr. GROSSMAN: The date, I believe, is October 10, 1950, when it was received back by the board.

(Marked Government's Exhibit 2-B.)

Mr. GROSSMAN: If your Honor please, I now especially direct your attention to two of the entries on the back of the questionnaire. The first one is dated October 25, 1950, which indicates the registrant on the basis of the questionnaires received up to date, namely, his original questionnaire and this special form for conscientious

objector, that the registrant was classified 1-A by a vote of 4 to 0 by the local board.

On October 30, 1950, he was mailed Form 110, which is his notification of registration. Defendant's counsel has conceded to me that that was received by the registrant.

Mr. ADLERSTEIN: That is conceded.

Mr. GROSSMAN: I believe he said notice of registration. It is notice of classification.

I now offer as Government's Exhibit 2-C a letter dated November 4, 1950, addressed to the local board from the defendant, signed by him, Harry G. Nugent, in which he requests a personal hearing at the local board.

(Marked Government's Exhibit 2-C.)

Mr. GROSSMAN: I now offer as Government's Exhibit Exhibit 2-D, SS Form No. 223, which is an order to report for an armed forces physical examination, which was sent to the registrant on January 8, 1951, ordering him to report at 39 Whitehall Street for what is known as a pre-induction physical.

On the 17th day of January, 1951, the original of this was sent to the registrant.

(Marked Government's Exhibit 2-D.)

Mr. GROSSMAN: I might also offer in connection with that, Government's Exhibit 2-E, which is dated the 17th day of January, 1951, indicating that he was acceptable. This form is known as a certificate of acceptability, and was mailed to the defendant; that he was found acceptable for induction into the armed services.

(Marked Government's Exhibit 2-E.)

Mr. GROSSMAN: I respectfully call the Court's attention to a notation on the back of his questionnaire which is dated January 29, 1951, which states that a card was sent to the registrant to appear on 2/1/51. Obviously this is in compliance with his request for a personal hearing, and that hearing was set for February 1, 1951.

In connection therewith, the board also received, and I now offer it as Exhibit 2-F, a letter dated January 26, 1951, received by the board on January 30, 1951, a letter signed by Martin C. Mitchell, Chairman, Executive Secretary of the Bible Students National Committee, which states some relevant facts that he considers concerning this defendant.

(Marked Government's Exhibit 2-F.)

The COURT: Where is that form, SS 150, is it?

Mr. GROSSMAN: The conscientious objector questionnaire (handing to the Court).

I now respectfully call the Court's attention to two notations on the back of the registrant's questionnaire. The first one is dated February 1, 1951, the date when he was called in for hearing. It is to be noted that he is classified 1-A-O, at the time, initialed by the board members by a vote of 3 to 0.

1-A-O classification is non-combatant, as your Honor knows. That is for non-combatant duty in the armed forces of the United States.

The COURT: That is on the back of what exhibit?

Mr. GROSSMAN: The back of Exhibit 2-A.

The COURT: That is the questionnaire?

Mr. GROSSMAN: That is correct, your Honor. There is a further notation dated February 5, 1951, that the Form 110 was mailed to registrant notifying him of his new classification. That was concededly received by the defendant.

Mr. ADLERSTEIN: Conceded.

Mr. GROSSMAN: I now offer Government's Exhibit 2-G, a letter dated February 14, 1951, addressed to the Local Board No. 40, and signed by the registrant, in which he states that he would like to appeal from his classification 1-A-O.

(Marked Government's Exhibit 2-G.)

Mr. GROSSMAN: I now offer Government's Exhibit 2-H, two letters, one of which was dated February 16, 1951, which is addressed to Selected Service Headquarters and signed by the Clerk of Local Board No. 40, inquiring whether the Society of Bible Students organization is a recognized organization; and the other letter is dated February 23, 1951, which is a response from Selective Service Headquarters to the local board, giving an answer to that letter, stating that it is an organization and what it has received from that organization.

I might mention, your Honor, at this time that in 1951 and thereafter there were no blanket exemptions or classifications for any organizations whatever, as there had existed at some prior time, I believe in 1945, where any member of certain organizations was classified a certain way, but there was no such process available in 1951.

The COURT: That means that each was passed on as an individual matter.

Mr. GROSSMAN: That is right.

(Marked Government's Exhibit 2-H.)

The COURT: Well, that reference to the resolution refers to the one that is already in evidence as part of the questionnaire?

Mr. GROSSMAN: That is the same.

The COURT: Attached to his special questionnaire?

Mr. GROSSMAN: That is correct, your Honor. I merely put it in so the file will be complete.

I now call your Honor's attention to an entry on the back of the registrant's questionnaire which is dated March 16, 1951, and reads as follows:

10. "Appeal Board Panel No. 2 has received the record and has determined that the registrant is not eligible for classification in either a class lower than 4-E or in 4-E and has directed that the file be transmitted to the United States Attorney for the Eastern District of New York for the purpose of securing an advisory recommendation from the Department of Justice on the claim of the registrant for deferment as a conscientious objector in accordance with Section 1626.25, paragraph A4 of the Selective Service regulations," and is signed by Julia M. Boland, Clerk.

Accordingly, I now offer as Government's Exhibit 2-I, a letter dated March 16, 1951, from Appeal Board Panel No. 2, signed by the clerk, and it is addressed to Hon. Frank J. Parker, United States Attorney for the Eastern District of New York, in which Section 1626.25 of the Selective Service regulations is complied with.

I might mention, your Honor, the reason this was sent to the Eastern District of New York is that the registrant was registered in a board which was under the jurisdiction of the Eastern District. However, the offense for which he is now being tried was actually committed within the Southern District. That is the reason for this office being involved in it now.

(Marked Government's Exhibit 2-I.)

Mr. GROSSMAN: I now offer as Government's Exhibit 2-J a series of papers, the first of which is the report of the hearing officer, Thomas O'Rourke Gallagher, in the case of this defendant, Harry Gray Nugent, which report concludes with the recommendation that the registrant be retained in Class 1-A-O.

Also attached to this exhibit are the minutes of the hearing which this registrant had before the hearing officer, Thomas O'Rourke Gallagher.

The top paper in this exhibit is a letter dated January 24, 1952, which is addressed to the chairman of the appeal board, and is signed by P. Oscar Smith, Special Assistant to the Attorney General, in which the Attorney General also concludes that the recommendation given by Thomas O'Rourke Gallagher is fair and makes the same recommendation to the appeal board.

I might mention, your Honor, that both the hearing officer and the Department of Justice recommendations—the hearing officer

is especially designated, and the Attorney General for the purpose of these hearings—are merely advisory to the appeal board.

After they received this back, they again classified him and notified the local board and this case was again given a 1-A-O classification.

(Marked Government's Exhibit 2-J.)

The COURT: May I see the original questionnaire?

(Handed to the Court.)

The COURT: In his first claim for exemption, under Series 14, the answer was: "Due to religious belief, I will only serve as a non-combatant."

Mr. GROSSMAN: That is right, which is the classification he subsequently was given.

The COURT: It is the classification he was placed in eventually?

Mr. GROSSMAN: That is correct, your Honor.

The COURT: SS Form No. 100—is that the one I just asked for and looked at? The original questionnaire?

Mr. GROSSMAN: That is correct; that is SS Form 100.

The COURT: All right.

Mr. GROSSMAN: Now, I respectfully call your Honor's attention to an entry on the last page of the registrant's questionnaire, dated February 4, 1952, which indicates that a Form 110 was mailed to the registrant, notifying him of his classification 1-A-O, which was given to him by the appeal board by a vote of 3 to 0. That card was admittedly received by the defendant.

12: Mr. ADLERSTEIN: That was received.

Mr. GROSSMAN: I now offer as Government's Exhibit 2-K, SS Form No. 252, which is an order to report for induction. It is dated February 6, 1952, an order to defendant Harry Gray Nugent to report at the armed forces induction station, 44 Whitehall Street, New York City, at nine A. M. on February 21, 1952.

(Marked Government's Exhibit 2-K.)

The COURT: What form did you call this? SS what?

Mr. GROSSMAN: 252. It is on the bottom of it.

The COURT: I thought you said 110.

Mr. GROSSMAN: No. 110 was what I read from the questionnaire, your Honor, which was the postcard mailed to him.

Now, I would like to offer as Government's Exhibit 2-L a copy of a letter which was sent to the registrant on February 12, 1952, and signed by Chandler Cobb, New York City Director of Selective Service, which reads as follows:

"Dear Mr. Nugent: This will acknowledge receipt of your special delivery letter dated February 9, which arrived this morn-

ing. I have been over your file and feel it would serve no useful purpose for me to interview you. You have been granted all your procedural rights and your order for induction must stand. Sincerely yours, Candler Cobb, New York City Director," a copy of which was sent to Local Board 40.

(Marked Government's Exhibit 2-L.)

MR. GROSSMAN: I might, in connection with that, if your Honor please, offer as Government's Exhibit 3, because it is no part of his file, a photostatic copy of the letter which I have received which the registrant addressed to Colonel Cobb, a letter dated February 9, 1952, together with certain exhibits which the registrant sent special delivery to Colonel Cobb, and the answer to which is

Government's Exhibit 2-L.

13 I now offer this as Government's Exhibit 3.

(Marked Government's Exhibit 3.)

MR. GROSSMAN: I now offer as Government's Exhibit 4 a letter dated February 21, 1952, from the Headquarters, U. S. Armed Force Induction Station, 39 Whitehall Street.

(Marked Government's Exhibit 4.)

(Mr. Grossman reads Exhibit 4.)

MR. GROSSMAN: If the Court please, the Government rests at this time.

HARRY GRAY NUGENT, the defendant, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct examination by Mr. Adlerstein:

Q. Mr. Nugent, do you recall receiving a notice to appear for a hearing before Mr. Gallagher?

A. Yes, I did receive a notice to appear before Mr. Gallagher.

Q. Well, just say yes or no.

A. Yes.

Q. Did you with that notice receive these instructions from the Office of the Attorney General, dated September 1, 1948 (handing to witness)?

A. Yes, I received those instructions and

MR. ADLERSTEIN: Well, I will offer the instructions in evidence.

MR. GROSSMAN: May I set them?

(Mr. Adlerstein hands to Mr. Grossman.)

MR. GROSSMAN: No objection.

(Marked Defendant's Exhibit A.)

44 Mr. ADLERSTEIN: If your Honor please, for the purpose of the record I would like specifically to refer to Instruction 3.

The COURT: All right.

Q. Now, pursuant to these instructions, did you go to the office of Mr. Gallagher to ascertain whether or not there were any objections against your claim for conscientious objection?

A. I did go to the office.

Q. And whom did you talk to?

A. I spoke with Mr. Gallagher's secretary.

Q. Did Mr. Gallagher's secretary tell you whether Mr. Gallagher was in?

A. She told me that Mr. Gallagher was away on vacation.

Q. And did you have a conversation with the secretary?

A. Yes, I did.

Q. Will you tell us what that conversation consisted of?

Mr. GROSSMAN: If the Court please, I respectfully object to this line of questioning as immaterial. A conversation he may have had with Mr. Gallagher's secretary is not part of the Selective Service file in this case.

Mr. ADLERSTEIN: That is the reason I offered this particular Clause 3. I am going to show that he was deprived of a fair hearing by the conversation he had.

The COURT: With the secretary?

Mr. ADLERSTEIN: Yes.

The COURT: What is the scope of her authority to make any statement with respect to procedure under the Selective Service system?

Mr. ADLERSTEIN: When a man goes to the office pursuant to instructions, your Honor, and he has talked to somebody who is apparently in authority and follows those instructions, I think he has some right, some color of right, to follow them.

15 The COURT: Oh, I will take it, but it certainly is clear that she had no authority to make any representations or statement with respect to the matter. He may answer.

Q. Will you please tell us what that conversation consisted of?

A. I informed the secretary that I came to see Mr. Gallagher, to see if there was an evidence in the FBI file which would tend to defeat my claim for a 4-E classification.

The secretary informed me, when I told her of this, that the FBI files were favorable and that I should have no difficulty in receiving my desired classification. And Mr. Gallagher's secretary also asked me if I were going to bring anyone as an advisor, which is stipulated in that paper I submitted to you, your Honor, and I informed her since the FBI records are favorable, I saw no need of it.

She said "That is right, because I feel you should have no trouble in receiving your desired classification because of the good recommendation from the FBI." I thought no advisor would be necessary. It was merely a routine matter.

She said, "You should have no trouble in receiving your classification."

The COURT: Of course, all of this is set forth in Government's Exhibit 3, which is the letter that the witness sent to Colonel Cobb. Is that so, in substance?

Mr. GROSSMAN: That is correct. This claim was reviewed by Colonel Cobb. I therefore move—

The COURT: Where do you see a reference in this exhibit, Defendant's Exhibit A, under Item 3 to an advisor? You referred to an advisor in your testimony and also referred to an advisor in Government's Exhibit 3.

16 The WITNESS: Your Honor, I believe that it is in the papers.

Mr. ADLERSTEIN: If your Honor reads the instruction sheet, Defendant's Exhibit A, it says he can bring along anybody as a witness.

The COURT: I understood that and that is precisely the reason why I am asking the question. You directed my attention, as Mr. Adlerstein did, and also the witness, to Item 3 in Defendant's Exhibit A, and the witness in his testimony has referred to an advisor being present at this hearing and in his letter which is Government's Exhibit 3, which was addressed to Colonel Cobb, he also made reference to an advisor.

I am asking both of you, that is, counsel and the witness, to point out where there is any reference to an advisor?

Mr. ADLERSTEIN: I think there may be a reference in another section to a witness or an advisor; I am not sure.

The COURT: You specifically directed my attention to that in the list of instructions.

Mr. ADLERSTEIN: Yes.

The COURT: And I don't see it there.

Mr. ADLERSTEIN: I wanted to shorten it, but the entire instructions are in evidence. What I wanted to say is that this deprived the man of a full hearing which is provided for in Clause 3. That is my contention. If your Honor looks, I think it is probably Clause 2, you will find that he is entitled to bring along witnesses. I am not sure of the exact clause, but it is in the neighborhood of 2 or 3.

The COURT: Well, Item 3, as I read it, has reference to being permitted to make a full and complete presentation of his claim and to bring with him at the hearing any witnesses or persons hav-

17 ing personal knowledge of the facts concerning his religious training and belief and concerning the character and good faith of his objection to participation in any form of war.

You may have reference to another item. I don't know.

MR. GROSSMAN: Well, I think that is what he is referring to.

MR. ADLERSTEIN: Can I go ahead, your Honor?

THE COURT: Well, there is an item here under 5, which you undoubtedly have reference to: The registrant may bring with him a relative or friend or advisor, who may sit with him at the hearing. Is that what you had reference to?

MR. ADLERSTEIN: That is one of the things I had reference to.

THE COURT: Go ahead.

By MR. ADLERSTEIN.

Q. This advisor you are referring to: Is he Mr. Martin Mitchell, who was referred to in Government's Exhibit 2-F?

A. Yes, he is. He is in the courtroom now.

Q. And he would have testified concerning your beliefs?

A. Yes, he would.

MR. GROSSMAN: I object, your Honor, to the form of the question.

THE COURT: I will take it. The fact is that there is a statement in there already by Mr. Mitchell.

MR. GROSSMAN: Yes.

Q. When you came before Mr. Gallagher for a hearing, will you tell us what questions he asked you and whether or not he permitted you to give a complete answer?

MR. GROSSMAN: Objection, your Honor. The full testimony, all the questions and answers, are already in evidence.

18 THE COURT: Well, he states that the transcript is not a correct transcript.

MR. ADLERSTEIN: That is right.

THE COURT: I will take it.

Q. Will you state wherein Mr. Gallagher prevented you from making a full statement of your claim?

A. When I arrived at Mr. Gallagher's office, Mr. Gallagher asked me to state my religious belief and why I had come to the conclusion that I came to, and I started to inform Mr. Gallagher of my progression of conscience and progression of faith, and Mr. Gallagher stopped me before I could hardly get started, and said I was too voluminous, and he told me then to answer all questions with yes or no.

Though I did state yes or no in my answers, I was nevertheless limited by Mr. Gallagher because the questions moved rather

rapidly, which didn't give me too much time to hear any questions. It was a rapid hearing, and I feel that Mr. Gallagher—that it was—there was a point where I tried to quote the Scripture to Mr. Gallagher, and Mr. Gallagher claimed that his file was full of my religious beliefs and he did not permit me to quote the Scripture I was trying to.

Q. More than a year and a half expired from the time you filed your questionnaire to the time you filed your Form 150 stating your conscientious objection, is that right?

A. Yes.

Q. When Mr. Gallagher stopped you, was it your intention to show what your progression was, and your change from a 1-A₅O over to a 4-E classification?

A. That is what I was trying to point out to Mr. Gallagher, that there was over a year in which I had, which I continued to study the Scriptures and the Lord's will concerning His children. There was over a year where I had developed in my faith, but these things Mr. Gallagher would not permit me to say.

19 Q. Mr. Gallagher, in his report that is part of Government's Exhibit 2-J, said you were lazy, shiftless, morally a weakling, and you had unusual motion in walking. Did Mr. Gallagher talk to you about any of these things at the hearing?

A. He made no statement about any of these things whatsoever.

Q. Did he tell you that the FBI report contained such statements?

A. He never mentioned the FBI report.

Q. Did Mr. Gallagher ever tell you anything about the contents of the FBI report?

A. He never mentioned the FBI report or the contents of it.

Mr. GROSSMAN: If your Honor please, I must object to this line of questioning. The FBI report is confidential, and Mr. Adlerstein well knows it. In preliminary motions before this trial, that was taken up. He was denied access to the FBI file.

The COURT: Oh, I will let it stand.

Mr. ADLERSTEIN: I would like to state at this time that I was going to make a motion on that ground, that when a person has a hearing, in order to have a due hearing, he is entitled to know the contents of all documents used against him at that hearing. It may not be available in this court at the time we make motions, but it must be available at that hearing.

I think that is referred to in various Supreme Court reports—I don't say in connection with this type of case, but it is referred to in other cases. A person is entitled to a full and fair hear-

ing. He is entitled to know the contents of documents used on the hearing.

Q. Mr. GALLAGHER said you had an easy believing religion, calling for little effort and practically no sacrifice. That is stated in his report. Did Mr. Gallagher ever discuss the sacrifices required by your religion?

A. He never discussed them.

20 Q. The minutes, which are also part of Government's Exhibit 2-J, refer to the fact that you spoke to a Mr. Nichols about your conscientious beliefs. Did Mr. Gallagher attempt to fix any time when you had spoken to Mr. Nichols?

A. No, he did not mention any date or try to fix any.

Q. According to the minutes just referred to, Mr. Nichols at that time was in the Government service, is that right?

A. That is right.

Q. He was in the Army?

A. He was.

The COURT: Well, doesn't the minute itself show that he was in the Army?

Mr. ADLERSTEIN: It does.

The COURT: Did you tell that to Mr. Gallagher?

The WITNESS: Mr. Gallagher mentioned it to me, he says, "I see Mr. Nichols is in the Army," and I said, "That is so."

He said, "Apparently he doesn't embrace your belief."

I said, "He doesn't hold to my belief, but he believes I am sincere."

Mr. ADLERSTEIN: Will your Honor permit me to read for the purpose of the record from Government's Exhibit 2-J, the minutes of the hearing before Mr. Gallagher?

The COURT: Well, they are already in evidence.

Mr. ADLERSTEIN: I agree, your Honor, but the Government has been reading from these documents. I would like to get a specific part into the record, if you will permit me.

The COURT: I will permit you to do it, but I don't see that it adds anything to the record. If you have a special purpose in reading it in, I will allow you to.

Mr. ADLERSTEIN: I have a special purpose.

The COURT: Well, go ahead.

Mr. ADLERSTEIN: This is a question by Gallagher:

21 "Q. Did you ever tell any of your friends or any of your neighbors about your beliefs with reference to this religion of yours?

"A. I believe it is my duty to tell my belief—

"Q. Wait a minute. Just answer the question.

"A. Yes.

"Q. From whom?

"A. Mr. William Nichols, at 678 East 24th Street, where I lived, near my former address. Mr. Irving Levitt, 120 Commonwealth Place, in the building where I live; Mr. Sam Mandelbaum, 678 Clermont Road. It is hard to enumerate them. I speak to many people.

"Q. Was that recently?

"A. Well, I constantly speak of my religion."

Mr. ADLERSTEIN: Well, that is all with this witness, your Honor.

The COURT: May I see a copy of the minutes.

~~Cross-examination by Mr. GROSSMAN.~~

Q. Mr. Nugent, I refer to Government's Exhibit 2-J, the portion thereof set forth in the minutes of hearing held on July 26, 1951. Can you tell us where that hearing was held?

A. It was held, I believe—it was held in Brooklyn. The hearing—

Q. At Mr. Gallagher's office?

A. At Mr. Gallagher's office.

Q. Who else was present besides you and Mr. Gallagher?

A. He had a gentleman there. He was taking, making a stenographic record of some of the comments that were made.

Q. Did this gentleman take it down by pencil on a book or did he have a machine?

A. He took it—I believe he was taking it down by pencil on a book.

Q. You state now that he only took some of the comments?

A. He only took down what Mr. Gallagher didn't strike out of the record.

22 Q. I show you now a copy of Government's Exhibit 2-J, and ask you whether all those questions were put to you and you made all those answers?

A. These questions were asked me, but these are not all the questions that were asked me. These are the ones that were not struck out from the record.

Q. And these are all the answers you gave to those questions?

A. These are the answers.

Q. Now, can you tell us at what point questions were asked and you made answers that were not recorded or that were struck out from the record? Was it at the beginning or at what point in the examination?

A. Well, after Mr. Gallagher asked me my address in the beginning and I gave it to him, and where I was born, and I gave him the date of my birth and so forth, then he asked me at that point what is the nature of my religious beliefs and why I had come, what brought me to the conclusions I have come to.

At that point I proceeded to tell Mr. Gallagher, but he interrupted me and I had no opportunity to show that there was a progression of faith on my part, a progression of conscience which increased my responsibilities towards God, as my knowledge increased.

Q. Mr. Nugent, you also stated that Mr. Gallagher asked you what religious organization you belonged to, and that that question was not recorded, either.

A. What religious organization?

Q. That is right.

A. He asked me who I met with. I told him. I didn't say that that wasn't recorded.

Q. It is recorded?

A. Yes.

Q. You see that at the bottom of page 1?

A. Yes.

Q. You also stated that at one point you quoted from the Scripture and Mr. Gallagher struck that from the record. On direct examination you so stated; is that right?

A. That is correct.

Q. Now, I refer you to page 2, the next page of the examination, the top question and answer. You quoted from the Scripture there, did you not, Mr. Nugent?

A. I had quoted from the Scripture to Mr. Gallagher, but apparently there were Scriptures that he did not particularly care for, and he struck them from the record.

Q. At what point in the examination did you make other quotes from the Scripture that were stricken from the record?

A. I cannot point out any one point, but all through the examination there were questions asked me, that he did instruct the stenographer to strike out from the record, and there is—the points are not few enough to enumerate them.

Q. Well, in reading this examination, Mr. Nugent, the questions in the main seem to read fairly continuous; that is, one question reads into another after your answer, is that not a fact?

A. There are questions which do lead one into another, I agree, but there are questions here; there are points here that I remember very vividly where Mr. Gallagher asked me certain questions in regard to my religion, and there were other places he would not let me finish on that point. Such as saluting the flag, which is in the record. He asked me would I salute the flag, and I said no, I would like to clarify my statement.

He said that would be all right, but I did want to clarify that statement.

Q. That is in the record exactly, isn't it?

A. Yes.

Q. There have been no deletions or no strikings?

A. Not on that particular point. On that particular point he simply did not permit me to go into detail on my reasons and also to clarify my statement.

Q. How did Mr. Gallagher put it to the stenographer when he wanted something stricken from the record?

A. Well, I remember Mr. Gallagher said, "We will just strike that out," and then he would rearrange, reword his question, or put another light on his question, a different type of question, and then inject it there.

24 Q. Did you at any point make any objection?

Mr. ADLERSTEIN: Well, I object to that. I don't think that is called for.

The COURT: I will allow it.

Mr. ADLERSTEIN: The instructions are that the hearing is informal, and I don't think he is permitted to make an objection.

The COURT: I will let him answer.

Q. Did you state to Mr. Gallagher at any point that you would like contained in the record what you were saying?

A. Well, at that time I didn't state to Mr. Gallagher at any point—Mr. Gallagher just said, just proceed, and struck out certain things, certain questions, and I didn't press that issue at the time.

Q. I show you now Government's Exhibit 2-A in evidence, your SS Form 100, your original Selective Service questionnaire, and ask you if that is your handwriting contained on page 7 of that questionnaire?

A. Yes, it is my handwriting.

Q. Will you read the statement that you made in your handwriting in the middle of that page?

A. This questionnaire that I received—

Q. Just read it, Mr. Nugent.

A. "Due to religious beliefs I will only serve as a non-combatant," and at that time—

Q. That is all I asked you. You made that statement at that time?

A. I did.

Q. You knew what you were doing?

A. I did.

Q. You understood that statement at the time?

A. I did.

Q. You still understand that statement?

A. I understand it far more thoroughly than I did at that time.

Q. And you were subsequently classified by your local board and by the appeal board after your appeal in Class 1-A-O?

A. Yes.

Q. Which is a non-combatant classification?

A. That is correct.

The COURT: Was that a true statement when you made it?

The WITNESS: That was a true statement when I made it.

Mr. GROSSMAN: No further questions.

Redirect examination by Mr. ADLERSTEIN.

Q. When you made the statement which was just read to you, while you believed it at that time, you were going to show Mr. Gallagher a change in your religion which did not permit you afterwards to adopt that statement, is that correct?

A. That is so.

Q. Now, when you went to the hearing before Mr. Gallagher, did you assume he had full authority to conduct the proceeding?

A. Well, that is what I understood.

Q. You didn't think you had any right to object to the way he conducted it?

A. Well, I didn't know what authority I would have. I felt that the situation was completely out of my hands there.

Q. You had no legal advice on the subject?

A. No.

Q. And you had no legal advice?

A. None with me.

Mr. ADLERSTEIN: That is all.

Mr. GROSSMAN: No further questions.

Mr. ADLERSTEIN: The defendant rests. Will your Honor hear me on a motion?

The COURT: Yes.

**MOTION TO DISMISS THE INDICTMENT AND FOR AN ACQUITTAL AND
DENIAL THEREOF**

Mr. ADLERSTEIN: The defendant moves to dismiss the indictment and for an acquittal on the following grounds:

26. The defendant was entitled to have witnesses at the hearing but he failed to bring a witness that he intended to bring because he was lulled into a sense of security by the statement of the secretary, which statement was relied on by the defendant.

Second, the defendant did not have a full and fair hearing before the hearing officer, on the ground that he was not permitted to explain his progress in religion which changed his ideas, from the 1-A-O classification which he had requested, to a 4-E classification; and this was in violation of the Selective Service Law of 1948, Section 6J and regulation 1626.25, which permits a full and fair hearing.

Three, defendant did not have a fair hearing because the FBI report which is supposed to be made pursuant to the Selective Service law, Section 6J, and the regulation 1626.25, was never adverted to at the hearing, nor were the contents disclosed to the defendant. He should have been advised of its contents so that if there were anything objectionable, he could have answered it, and if there was anything in his favor, he could have had the benefit of it.

On the fourth ground, that many of the items of explanation were striken from the record, thus not giving the defendant a chance of a fair hearing.

Fifth, the finding that the defendant did not qualify as to religious affiliation was in violation of Section 6J of the Selective Service and Training Law, and a violation of regulation 1622.20, because belonging to any religious organization or sect is not required, and the finding is without basis in fact, as will be seen from Government's Exhibit 2-H, and the statement made in the record by the Ass't United States Attorney General about the case and defendant was prejudiced by reason of that.

Six, that the finding that no one was apprised of the claim of the defendant before the emergency is against the evidence, 27 as the record shows that the defendant had spoken with Mr.

Nichols, who was then in the Army continually, and the hearing officer did not try to fix a date when he had spoken to Mr. Nichols.

Seventh, the hearing officer's statements and findings were arbitrary and capricious on the following ground:

There were character and personality statements made in the report which had no reference whatsoever to the minutes, had no effect on the conscientious objection of the defendant and indicated a prejudice on the part of the hearing officer. The religious sacrifices of the defendant were not discussed, although it was reported at the conclusion by the hearing officer.

The defendant was not given an opportunity to explain why he would not salute the flag, and therefore his case was prejudiced.

The hearing officer criticized the spelling of the defendant, which has nothing to do with his conscientious objection to war. The statement that he made that defendant's claim is not founded on truth or fact is not founded in any of the evidence.

Eight. There is no basis in fact for the hearing officer's conclusions.

Nine. The findings of the Assistant Attorney General favor the defendant. That the Assistant Attorney General did not have the benefit of the FBI report or the evidence of the defendant showing his progress from the claim of 1-A-O to 4-E. Therefore he was prevented from making a fair and honest conclusion, after reading

what the defendant would have said regarding his progress in religion.

Those are my grounds.

Mr. GROSSMAN: Your Honor, I would like to answer especially this contention of the defendant about his gradual change 28 from his belief, or his religious belief, as being opposed only first to non-combatant duty and subsequently opposed to all types of military duty.

I respectfully maintain that your Honor must disregard that under the Selective Service law and regulations, because the defendant, the registrant rather, has a right at any time to go back to the board and ask for a new classification where he has any additional evidence. Section 1625.1 and 2 specifically talks about reopening the registrant's classification; that a classification is not permanent and when he has new evidence, it may be considered anew.

His failure to go back to the board is no reason why it should be considered subsequently by other authorities. He had his remedy and he failed to take advantage of it. It was mere afterthought, we feel.

Secondly, I think the hearing before the Government appeal agent, namely, Mr. Gallagher, shows a continuity of questions, one question practically following another; that each thing was taken down. When Mr. Gallagher asked a question and got no answer, he so stated in the record, so as to make it clear that there was no answer.

As to the other point raised about the FBI reports: it has been determined that they are confidential; that they are for the hearing officer to use in making his advisory recommendation.

Mr. Adlerstein also raises the point that he should have set a date as to when the defendant spoke with Mr. Nichols. Such matters are immaterial in setting this man's classification and religious beliefs.

I feel that he was given a more than adequate hearing under the law, and Mr. Gallagher wrote a report of that hearing which was concurred in by the Department of Justice, all of which opinions are merely advisory when they go back to the appeal board.

Mr. Adlerstein: Will your Honor permit me to make a short statement regarding this?

29 The COURT: Yes.

Mr. ADLERSTEIN: In his report the hearing officer says, "In all events, this registrant definitely has not qualified as a conscientious objector as to church affiliations, religious beliefs, or any statement or affirmative action which were attested to by anyone on his behalf made prior to the National Emergency."

That is why I asked whether Mr. Gallagher had fixed the date when he made these statements to Mr. Nichols. Now, if he had

asked that question, then I think this statement could not have been made by Mr. Gallagher, since there was no basis for this statement. Mr. Gallagher should have predicated what he stated upon such state of facts.

Not having done so, I claim that that conclusion of Mr. Gallagher was unwarranted.

I also say that Mr. Nugent, the defendant here, did make the claim before the local board. A year and a half expired before he filed his Form 150, because it wasn't sent to him. More than a year and a half after he filed his original questionnaire, and in this Form 150 he had asked the local board to classify him in 4-E.

So, therefore, your Honor, I say that he did make the claim before the local board, and not as Mr. Grossman has said, that he didn't make it until later on, when he claims it was an afterthought. This was no mere afterthought. It was a statement which was made in good faith before the local board, and had Mr. Gallagher asked a proper question concerning Mr. Nichols, had we been able to produce the witness before Mr. Gallagher, we would have been able to prove—

The COURT: What stopped you from producing the witness?

Mr. ADLERSTEIN: As I said, he was lulled into a sense of security by his talk with the secretary to Mr. Gallagher.

30 Here is a man who knows nothing about legal procedure. He gets information and he relies on that information. The man is really entitled to produce any proof he can if he is misled; even if it is in good faith, it is not his fault.

The COURT: You mean he can walk into an office and talk to a telephone operator or a stenographer and conclude—

Mr. ADLERSTEIN: No. Mr. Gallagher was out of town. He went pursuant to instructions. He certainly was entitled to get that.

The COURT: Well, let me see Exhibit 2-F. Who is the man you suggest that the defendant claimed he was going to bring with him before Mr. Gallagher?

Mr. ADLERSTEIN: This man Mr. Mitchell.

The COURT: Mr. Mitchell wrote a letter dated January 26, 1951, to the Selective Service system, which is Government's Exhibit 2-F, in which he made reference to this defendant, Harry G. Nugent, Jr., and the date that the hearing was held before Mr. Gallagher was July 26, 1951, some six or seven months thereafter.

I think one would have to be incredulous not to believe that this defendant had been in consultation with Mr. Mitchell some six or eight months before the hearing and that he knew he had a right to bring any person that he wanted to at that hearing, particularly Mr. Mitchell.

Mr. ADLERSTEIN: But we don't contend that, your Honor, he was going to bring him. He had spoken to Mr. Mitchell and wanted

to bring him, but he was misled into not bringing him. We don't say it was done wilfully, but we do say, nevertheless, he was misled. That would deprive him of a fair hearing.

The COURT: What would Mitchell have testified to?

Mr. ADLERSTEIN: He would have testified to the progress of this defendant, the date when he gave up his 1-A-O belief and adopted the 4-E stand.

31 The COURT: How would Mitchell know when he gave up his belief? He could only tell what the defendant told him. The defendant is the one who could state those facts, not Mr. Mitchell.

Mr. ADLERSTEIN: It seems to me that these regulations ask you to bring these witnesses for the purpose of testifying whether or not you have spoken to anybody about your belief. These are the requirements of the law, and that is the only way you can prove it; not only by your own statements, but what you have said to other people. That is the nature of this type of belief and the nature of the Selective Service law.

The COURT: I should also like to call your attention to the fact that there is a rather substantial difference in the dates when this defendant was supposed to have been baptized. Mr. Mitchell said it was March 31, 1946, at the Emanuel Baptist Church in Brooklyn. I think the statement of the defendant in his own form indicated another date.

Where is the Selective Service form—

Mr. GROSSMAN: The original questionnaire, your Honor? I believe you have the original questionnaire.

The COURT: The defendant's statement in Exhibit 2-B under Series 4 in answer to Question 2b of that series is: "I became a member March 13, 1945, at 104 Clark Street, by baptism in water."

I will deny the motion.

Mr. ADLERSTEIN: I would like to make this one statement. I spoke to the defendant on that and he said he relied on his memory when he made it, but he says Mr. Mitchell's statement is the correct one. I don't think that is much of a discrepancy which would require rejection of the motion.

The COURT: It may not be.

Mr. ADLERSTEIN: Exception.

The COURT: Both sides rest?

Mr. GROSSMAN: The Government rests, your Honor.

The COURT: The Court finds the defendant guilty.

In reference to the statement made by the defendant in his original questionnaire in Government's Exhibit 2-A that he would

serve only as a non-combatant, there is substantial evidence to warrant the classification made by the board.

Mr. GROSSMAN: The Government is ready for sentence, if your Honor desires to sentence the defendant at this time.

The COURT: As a matter of fact, the evidence indicates that the board classified the defendant precisely as he asked to be classified in his original request.

Mr. ADLERSTEIN: As I said, your Honor, we didn't have a fair chance to prove it.

The COURT: There is certainly no evidence to indicate that.

Mr. ADLERSTEIN: Well, I can't introduce that evidence here. I have to produce something for the hearing officer, because this court cannot classify a registrant. If your Honor will permit me, I will introduce the evidence here, but I don't think your Honor has jurisdiction to hear it.

The COURT: You know that I don't. I will take the defendant's statement if you want to give it to me as to when he claims this change of attitude came about. At what precise point.

Mr. ADLERSTEIN: Yes, I would like the defendant to make that statement.

Mr. GROSSMAN: I have no objection to your taking it. I think it is already contained in the papers, your Honor. His own statement in the letter to Colonel Cobb, where he talked about his progression.

The COURT: Well, he talks about his progression in general here. I am asking specifically when he reached the point that he decided he would not serve as a non-combatant, and it was contrary to his religious belief.

33 Mr. ADLERSTEIN: Do you want the defendant to make it from here?

The COURT: It doesn't make any difference.

HARRY GRAY NUGENT, the defendant, resumed the stand:

By the Court.

Q. Now, Mr. Nugent; I asked you when you were under examination earlier whether or not the statement you had made in the original questionnaire that you would serve only as a non-combatant was true, and you said it was.

A. It was true, your Honor.

Q. When, for the first time, was that statement not true as far as your religious beliefs were concerned?

A. The first time was, I would say, about exactly one month after I mailed back my first questionnaire to the local board. It was at that time that I started to reconsider my position, and I questioned if it was the right thing, for I am a consecrated Christian.

The Scriptures tell us, we are admonished, children are admonished when He says:

"I beseech you therefore, brethren, that by the mercies of God, you will offer your bodies a living sacrifice, holy, acceptable unto God, which is your reasonable service."

That is, I believe, to give my all to my Lord, my allegiance and everything. I felt if I would turn around now and swear into the armed forces, it would be simply taking away what I already agreed to give to God.

And the Scriptures tell us not to be transformed: "be not conformed to this world, but be ye transformed by the renewing of your mind that ye may prove what is that good and acceptable and perfect will of God."

34 That is what I did that day, and I started to prove it, what my religious belief was. It would be a contradiction if I were to swear my soul to the armed forces.

The Scriptures say: "Ye are not your own for ye are bought with a price." So I couldn't very well give myself to the armed forces or anyone else when I agreed to give my all to the Lord. It would be a contradiction to go into the Army. I also felt that any position I would take in any branch of the armed services nevertheless would be linked with the commission of human destruction. If I worked in a hospital, I would be relieving another man to go into the Army—a military hospital.

Q. And this knowledge came to you within one month after you had filled out the original questionnaire in which you had indicated a readiness to serve in non-combatant service? That is just the question I am asking you. Is that right?

A. Most of these conclusions I did come to within one month. The conclusions of progress in my stand to 4-E, I came to that conclusion in one month, your Honor.

Q. You have been a member of this Bible group for a considerable time before you signed the first questionnaire, had you not?

A. I was, your Honor.

Q. You had been a faithful Bible student member?

A. Yes, your Honor.

Q. And fully familiar with its doctrines?

A. Our doctrines are not formal.

Q. You have no formal doctrine, I understand that.

A. Our doctrines are the preaching of the Kingdom of Our Lord which will be established.

Q. You had familiarity with that doctrine?

A. Yes.

Q. The time you filed the first questionnaire in February, 1949?

A. I was familiar with our doctrines, yes.

Q. And you knew those doctrines were substantially important in connection with filling out the questionnaire?

35 A. These doctrines that we express are not doctrines—we do not try to set up standards for others as far as conscientious objection is concerned.

Q. This was a standard you were permitted to set up for yourself under the questionnaire and you understood it to be such at the time, did you not?

A. I did understand it..

Q. Had you, as a matter of fact, consulted with fellow members prior to filling out this questionnaire?

A. Not prior to filling out the first questionnaire, no.

Q. When had you consulted for the first time with fellow members?

A. I consulted the first time with Mr. Martin Mitchell, after my filling out of the first questionnaire.

Q. How long after filling out the first questionnaire?

A. I believe I consulted with him about a month or two months after that. I don't really remember the first time I consulted with him.

Q. Is it mere coincidence that you consulted with him about a month or two after filling out this questionnaire and that that was the time you discovered that the original answer that you were prepared to serve in non-combatant service was not a true reflection of your attitude?

A. Your Honor, in my consulting with Mr. Mitchell, he didn't advise me to take a stand as to 4-E; neither did he advise me not to. But I simply informed him, and I am not sure, your Honor, of the date, but I simply informed him that I was going to ask for a 4-E classification, and I also told him my reasons why, but Mr. Mitchell didn't advise me to take any particular stand. Simply as an advisor to us after we told him the stand we had taken.

Q. You had told Mr. Mitchell when you consulted with him after you had filled out the first questionnaire in which you had indicated a readiness to undertake non-combatant service, that that had been your answer, had you not?

36 A. I can't, as I say, I can't remember my first contact with Mr. Mitchell. I have known him for many years, and the first time I spoke with him pertaining to that subject, I don't know. So I am not positive of just what I said to him, but it was a few months, I am quite sure, after my first questionnaire that I discussed this, the draft situation, with him.

Q. Now, when you came to the change of attitude within a month after you filled out the first questionnaire, did you write to

W. J. HOLLISTER,
 L. H. NORBY,
 ROY E. MITCHELL,
 MARTIN C. MITCHELL,
 FRED MUNDELL,
 HENRY E. ANDERSON,
 W. N. WOODWORTH,
 FELIX S. WASSMANN,
 LULU P. LOOMIS,
 FRED BRIGHT.

Selective Service System
 LOCAL BOARD No. (40)
 JAN 30 1951
 850 Flatbush Avenue
 Brooklyn 26, N. Y.

BIBLE STUDENTS NATIONAL COMMITTEE

FOR RELIGIOUS CONSCIENTIOUS OBJECTORS

Thy Word
 is
 truth ..

CHAIRMAN: Martin C. Mitchell, 34 Hardy Lane, Levittown, N. Y.
 Edward Lorenz, 5633 Coliseum Street, Los Angeles 16, Calif.
 Adam Miskowitz, 937 North Karlov Avenue, Chicago 51, Ill.
 Raymond J. Krupa, 8191 Wisner, Detroit 34, Michigan

January 26, 1951

Selective Service System
 Local Board No. 40
 850 Flatbush Ave.,
 Brooklyn 26, N. Y.

Re. Harry G. Nugent Jr.

50-40-29-474
 1a 1-17-51 Acc.

GENTLEMEN:

Personally known to me since he was twelve or thirteen years old
 is Harry G. Nugent Jr.

62 Both his parents and he have been regular attendants at
 our Sunday meetings at 104 Clark Street. As members of
 our congregation he and his father in particular have also attended
 our mid-week Bible studies. His father is a Deacon in our church,
 of which congregation I am a minister.

your local board, saying that "since filling out the questionnaire which is now pending before your board, I have had a change of attitude, and the answer which I gave does not reflect my attitude with respect to non-combatant service"? Did you say that?

A. Your Honor, I felt—

Q. Go ahead.

A. I felt that the appropriate time to do that would be when I received my conscientious objector form. I had no idea it was going to be over a year before I received it.

Q. You were fully aware that you had asked them to classify you as a non-combatant, and you knew that they were taking action or processing your application at that time, did you not?

A. Your Honor, I was classified at that time 1-A, and I thought that classification would remain until I received a conscientious objector form, and when I did receive it, I asked for 4-E.

Then, after, of course, I went through and I had the hearing, and at the hearing they gave me 1-A-O. Then I appealed it.

Q. That was the one you had asked for originally, 1-A-O?

A. Yes.

Q. That was precisely what they gave you.

A. It was what I asked for originally, your Honor, but when I appeared there I didn't appear to ask for 1-A-O, but I was asking for 4-E.

I felt then it was a complete violation of my belief to be—to accept 1-A-O.

37 Q. Did you think, when you were coming to the conclusion as to this progressive attitude, that you were under a duty to notify them as a matter of candor that you did have a different attitude and that you no longer professed the belief that you could serve as a non-combatant? You say it violates your conscientious views; didn't you feel that that was required of you, as a moral than, to advise others whom you knew would take action upon the basis of your statement that you did have a change of attitude?

A. Well, as I said, your Honor, I thought the appropriate time to advise them would be when I received my conscientious objector form.

The COURT: All right.

Mr. ADLERSTEIN: Could I ask one question?

The COURT: You may ask as many as you want.

COLLOQUY

By Mr. ADLERSTEIN.

Q. You felt that your classification would not be completed until they had received the return of your Form 150 as to conscientious objector?

Harry Nugent (the registrant) was baptised by me March 31, 1946 at the Emmanuel Baptist Church in Brooklyn.

The religious background (Parents and Grandparents) and religious training and belief of the Registrant as expressed to me and known by me, are against his participating in war in any form. With him this includes non-combative as well as combative military training or service. I believe his beliefs to be such as to entitle him to exemption from military service as provided for in Section 6(j) of the Selective Service Act for 1948.

The Federal Bureau of Investigation is informed as to the attitude of the Associated Bible Students relative to the Selective Service Act of 1948, and have made the same a part of the permanent records of that Bureau.

All during the last war, most Draft Boards seemed desirous of doing the fair thing by acting in harmony with the law and the evidence, whether the decision rendered on this basis was to their personal liking or not. I also found the Hearing Officers interested in ascertaining the sincerity and convictions of the registrant and granting him the exemption or classification provided for by law, and this was done though they in no way shared his conviction.

Respectfully yours,

MARTIN C. MITCHELL,
Chairman & Executive Secretary.

63 GOVERNMENT'S EXHIBIT 2-H

Two Letters

February 16, 1951

Selective Service Headquarters,
350-5th Ave.,
New York, N. Y.

Re: Harry C. Nugent
S.S. No. 50-40-29-474

GENTLEMEN:

Please advise whether the Associated Bible Students Organization, that sponsors registrant's claim as a conscientious objector, is recognized.

Registrant has appealed, and I think such information should be in the file before it goes to the Appeal Board.

Very truly yours,

A. PETERS, Clerk,
LOCAL BOARD NO. 40.

A. That is right.

Q. And that is why you didn't write any prior communication?

A. Yes.

Mr. ADLERSTEIN: I can produce Mr. Mitchell on the stand.

The COURT: Mr. Mitchell's statement is in evidence.

Mr. ADLERSTEIN: As to the date when he spoke to the defendant.

The COURT: After listening to this defendant's further testimony, I adhere to my original finding of guilty.

Mr. ADLERSTEIN: Exception. We are ready for sentence.

38 Mr. GROSSMAN: Your Honor has heard the evidence in this case. I would like to clarify one point: that one comment in the last bit of testimony by the defendant, namely, that he was waiting for his classification after his conscientious objector form. He wasn't classified until some time after he got his conscientious objector form and then for the first time was given 1-A, at which time Government's Exhibit 2-C went in, which is the request for a hearing.

He was given a hearing, and as a result of the hearing, was given a 1-A-O classification, at which time he was given every opportunity to state his change of belief or anything else if he so desired.

I would like to call your Honor's attention, to clarify one thing that seems to have drifted around here about Mr. Gallagher not having certain dates and other information.

For the record I would like to state that Mr. Gallagher had the advantage of a thorough report. Some twenty pages are here from the FBI confidential report.

Mr. ADLERSTEIN: I would like to object to that statement. There is nothing in the record—

The COURT: Well, it has no bearing on the trial proper, in any event.

Mr. GROSSMAN: There was much made of the fact that he didn't have certain information before him. We all know pursuant to the regulation he has such information before him and makes his findings both on the hearing before him and this other information which is contained in this file.

You will also note in this case that this defendant asked initially a classification for non-combatant duty, and he was given that classification finally, and it was determined that that should be his classification, both by the local board, by the appeal board, by the hearing officer. That was their recommendation. And he failed to keep his part of the bargain, as we see it. When he asked for something, he got it; then he wanted a little more.

We feel that this is an outright change of mind on his part. When he saw that it was easy to get what he wanted, so to speak, he went after a little more. He didn't want any part of the service.

In view of that, your Honor, the Government has a recommendation to make as to sentence, if you would like to hear it.

The COURT: What is it?

Mr. GROSSMAN: The recommendation in this case is that the defendant be sentenced to five years.

The COURT: Do you want to make a statement on behalf of the defendant?

Mr. GROSSMAN: May I also point out to your Honor that the basis for that recommendation is that this man has given the Government all this trouble and effort to classify him, and he received the classification he desired, and, therefore, he should be given the maximum.

The COURT: That would hardly be a reason for giving the maximum. The fact that the Government had some trouble is no excuse for giving the maximum.

Mr. GROSSMAN: There is nothing in his file to indicate that there was any basis for his stand. He was active, as your Honor pointed out, in this group. He had never, although living fairly near the local board, come to tell the board.

The COURT: That could be a mistake of judgment. The trouble of the Government is not a ground for giving the maximum.

Mr. ADLERSTEIN: I would like to say that the defendant acted in good faith in this case, and that his own testimony speaks 40 for itself. I think all the testimony in the record is in his favor.

I say if we had been given a reasonable opportunity, Mr. Gallagher couldn't have made the finding he did make. I think if he had referred to the FBI report in his statement, I think that it would be shown that the defendant acted in good faith.

I think there is evidence in the record from the Assistant Attorney General which shows the character of this defendant. I think the fact that he did not communicate with them for a year and a half cannot be weighed at all against this defendant because I think he is not expected to know all the intricacies of the Selective Service law, nor be thinking all the time what he should do. I don't think the man has any obligation to keep everything in mind all the time.

The fact that he said he thought the proper time to do that was when he got Form 150, I think your Honor ought to take into consideration. I don't think the case itself warrants any such thing as five years. In fact, I think a better recommendation is a suspended sentence. I think the man has shown his good faith.

The COURT: Does the defendant himself want to make any statement in addition to the one that counsel has made?

The DEFENDANT: I would like to make one statement in regard to what Mr. Grossman said to you. Mr. Grossman said if I could receive 1-A-O, I would like to get a little more. I was classified, your Honor, 1-A when I asked for a 4-E classification, and it wasn't after I received 1-A-O. I feel Mr. Grossman might have given that impression.

The COURT: Well, I have the feeling, and I think there is evidence to indicate that it is a justified feeling, that this defendant had been in close communication with representatives of the Bible Students National Committee, the officials of which clearly 41 knew and were fully aware of the requirements under the Act and the various steps to be taken to see that men who were rightfully and properly entitled to the classification of exemption asked for by this defendant were actually granted their proper classification.

I think there is unmistakable proof throughout the record that such is the fact.

I have the feeling further that notwithstanding the suggested change of view brought about by progressive study or continued study, that the original statement reflected the true state of feeling and views of this defendant, and that the change of attitude was brought about after his classification was granted as a result of interest manifested by some of the representatives of the Bible Students group. That was their right. I am not quarreling with them, but nevertheless the true attitude of the defendant, I think, is reflected in the original answer, and the draft board gave him precisely what he asked for and which reflected his conscientious belief at the time.

SENTENCE

Under all the circumstances, the Court imposes a sentence of two and a half years. He is committed to the custody of the Attorney General to be dealt with accordingly.

Mr. ADLERSTEIN: Would your Honor release the defendant on bail pending appeal?

The COURT: You will have to go upstairs for that.

Mr. ADLERSTEIN: I think we have substantial ground.

GOVERNMENT'S EXHIBIT 1.

Waiver of Trial by Jury.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Stipulation C 137-349

UNITED STATES OF AMERICA, Plaintiff,
against

HARRY G. NUGENT, Defendant.

It is hereby stipulated and agreed by and between the defendant, Harry G. Nugent, his Counsel, Herman Adlerstein, Esq., and the United States of America by Myles J. Lane, United States Attorney, and his assistant, Louis Grossman, of Counsel, that after being advised by the court of the defendant's constitutional right to a trial by jury, the defendant, Harry G. Nugent, hereby voluntarily waives a trial by jury and consents to a trial before Judge Edward Weinfeld.

Dated: New York, N. Y., April 21, 1952.

HARRY GRAY NUGENT,
Defendant.
HERMAN ADLERSTEIN,
Attorney for Defendant.
MYLES J. LANE, G. H.
United States Attorney.

Approved:

EDWARD WEINFELD,
U. S. D. J.

Page 7 of Classification Questionnaire.

SERIES XIV.—CONSCIENTIOUS OBJECTION TO WAR

INSTRUCTIONS.—Any registrant who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form shall sign the statement below requesting a Special Form for Conscientious Objector (SSS Form No. 150) from the local board.

By reason of religious training and belief I am conscientiously opposed to participation in war in any form and for this reason

hereby request that the local board furnish me a Special Form for Conscientious Objector (SSS Form No. 150) which I am to complete and return to the local board for its consideration.

HARRY GRAY NUGENT

SERIES XV.—PHYSICAL CONDITION

INSTRUCTIONS.—Every registrant shall complete this series. Any registrant who answers any of the questions listed below by "Yes" and who believes himself physically disqualified for service in the Armed Forces may attach an affidavit from his physician, hospital, or sanatorium to support his claim.

1. Do you have any physical or mental condition which, in your opinion, will disqualify you from service in the Armed Forces? Yes ; No .

2. If the answer to Question 1 is "Yes," state the condition from which you are suffering —.

3. Are you now, or have you ever been, an inmate or a patient in a mental hospital or institution? Yes ; No .

44 4. Are you now, or have you ever been, an inmate or a patient in a tuberculosis hospital or sanatorium? Yes ; No .

5. If the answer to Question 3 or Question 4 is "Yes," give the name and address of each hospital, institution, or sanatorium —.

6. Have you had treatment from a physician for any condition within the last 5 years? Yes ; No .

7. If the answer to Question 6 is "Yes," state each condition from which you suffered and give the name and address of the physician who attended you, and dates of each treatment —.

REGISTRANT'S STATEMENT REGARDING CLASSIFICATION

INSTRUCTIONS.—It is optional with registrant whether or not he completes this statement, and failure to answer shall not constitute a waiver of claim to deferred or other status. The local board is charged by law to determine the classification of the registrant on the basis of the facts before it, which will be taken fully into consideration regardless of whether or not this statement is completed.

In view of the facts set forth in the questionnaire it is my opinion that my classification should be Class —.

The registrant may write in the space below or attach to this page any statement which he believes should be brought to the attention of the local board in determining his classification.

Do to religious beliefs, I will only serve as a noncombatant.

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—1. Every registrant shall make the registrant's certificate. 2. If the registrant cannot read, the questions and his answers thereto shall be read to him by the person who assists him in completing this questionnaire. 3. If the registrant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

NOTICE.—Imprisonment for not more than five years or a fine of not more than \$10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Selective Service Law of 1948.)

I, HARRY GRAY NUGENT, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing are in my own handwriting.

Registrant sign here  HARRY GRAY NUGENT

GOVERNMENT'S EXHIBIT 2-B.

Form No. 150; Special Form for Conscientious Objectors.

~~SELECTIVE SERVICE SYSTEM~~

SPECIAL FORM FOR CONSCIENTIOUS OBJECTOR

Selective Service No.—50-40-29-474

~~SELECTIVE SERVICE~~
LOCAL BOARD No. 40
44 Court Street,
Brooklyn 2, N. Y.

(Local Board Stamp)

Name—Nugent, Harry Gray

Address—120 Kenilworth Pl., Bklyn., N. Y.

This form must be returned on or before 10-13-50.

INSTRUCTIONS

A registrant who claims to be a conscientious objector shall offer information in substantiation of his claim on this special form, which when filed shall become a part of his Classification Questionnaire (SSS Form No. 100).

The questions in Series II through V in this form are intended to obtain evidence of the genuineness of the claim made in Series I, and the answers given by the registrant shall be for the information of only the officials duly authorized under the regulations to examine them.

In the case of any registrant who claims to be a conscientious objector, the local board shall proceed in the prescribed manner to determine his proper classification. The procedure for appeal from a decision of the local board on a claim of conscientious objection is provided for in the Selective Service Regulations.

47. Failure by the registrant to file this special form on or before the date indicated above may be regarded as a waiver by the registrant of his claim as a conscientious objector; *Provided* that the local board, in its discretion, and for good cause shown by the registrant, may grant a reasonable extension of time for filing this special form.

SERIES I.—CLAIM FOR EXEMPTION

INSTRUCTIONS.—The registrant must sign his name to either statement A or statement B in this series but not to both of them. The registrant should ~~strike~~ out the statement in this series which he does not sign.

(B) I am, by reason of my religious training and belief, conscientiously opposed to participation in war in any form and I am further conscientiously opposed to participation in noncombatant training or service in the armed forces. I, therefore, claim exemption from combatant training and service and, if my claim is sustained, I understand that I will, because of my conscientious objection to noncombatant service in the armed forces, be deferred as provided in Section 6(j) of the Selective Service Act of 1948.

HARRY GRAY NUGENT

SERIES II.—RELIGIOUS TRAINING AND BELIEFS

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Do you believe in a Supreme Being? Yes ; No
48. 2. Describe the nature of your belief which is the basis of your claim made in Series I above, and state whether or not your belief in a supreme being involves duties which to you are superior to those arising from any human relation.

My letter answers this question. But I will state, We are to obey God rather than man. (Acts 5:29.) No man can serve two

masters. (Matthew 6:24) And our Lord said, If my kingdom were of this world, then would my servants fight. John 18:36.

3. Explain how, when, and from whom or from what source you received the training and acquired the belief which is the basis of your claim made in Series I above.

I have been raised in the belief I now have. And at the age of sixteen, I began to read book's by Pastor Russell; and to meet with people with like minded faith. As a result, my faith grew into conviction, and my convictions lead me to consecrate my life to God. (Romans 12:1)

4. Give the name and present address of the individual upon whom you rely most for religious guidance.

Mr. Ludlow P. Loomis, 145 W. Passaic Avenue, Rutherford, N. J.

5. Under what circumstances, if any, do you believe in the use of force?

Under no circumstances. In the Old Testament; the Jewish people were permitted to use force. But not so with the Christian. For he is given a new commandment, John 2:8 And is told to turn the other cheek etc. Matthew 5:39 & 5:43-44.

6. Describe the actions and behavior in your life which in your opinion most conspicuously demonstrate the consistency and depth of your religious convictions.

49. I am incessantly engaged in various activities in the showing forth the praises of him who has called me out of darkness into his marvellous light. I Peter 2:9

7. Have you ever given public expression, written or oral, to the views herein expressed as the basis for your claim made in Series I above? If so, specify when and where.

When the opportunity presents itself, I tell all those who have an ear to hear of my Lord's second presence and of his Kingdom soon to be set up. I do not preach conscientious objection. For I feel this is an individual matter.

SERIES III.—GENERAL BACKGROUND

INSTRUCTIONS.—Every question in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Give the name and address of each school and college which you have attended, together with the dates of your attendance; and state in each instance the type of school (church, military, commercial, etc.).

Name of School—Type of School—

New Bridge Road School—Public-Grammer

Location of School—Dates Attended—

New Bridge Rd. East L. I. Meadow—From 1935 to 1946

Name of School—Type of School—

I don't remember—Grammer

Location of School—Dates Attended—

Kew Gardens L. I.—From 1940 to 1941

Name of School—Type of School—

PS. 152 & PS. 90 Brooklyn—Grammer

56 Location of School—Dates Attended—

152 Est. 24 St. Bk. PS. 90 Church & Dean—From 1941 to 1945

Name of School—Type of School—

High School of Industrial Art—High School

Location of School—Dates Attended—

East 51 St. New York City—From 1945 to 1947.

2. Give a chronological list of all occupations, positions, jobs, or types of work, other than as a student in school or college, in which you have at any time been engaged; whether for monetary compensation or not, giving the facts indicated below with regard to each position or job held, or type of work in which engaged.

Type of Work—Name of Employer—

Theater Usher—RKO Albee

Address of Employer—Period Worked—

Albee Sq Bklyn, NY—From 1945 to 1945

Type of Work—Name of Employer—

Trying verious Ideas with my Father

Address of Employer—Period Worked—

120 Kenilworth Pl.—From 1946 to 1947

Type of Work—Name of Employer—

Head of stock—Martian's Dept Store

Address of Employer—Period Worked—

501 Fulton St Bk. NY—From 1947 to 1948

Type of Work—Name of Employer—

Assisting my Father in Apt Bldg.

Address of Employer—Period Worked—

120 Kenilworth Pl. & 1650 Ocean Pk—From 1949 to 1950

51 3. Give all addresses and dates of residence where you have formerly lived.

Name of City, Town, or Village—State or Foreign Country—
New York City—New York

Street Address or R.F.D. Route—Dates of Residence—
44 East 57th St—From 1929 to 1935

Name of City, Town, or Village—State or Foreign Country—
East Meadow—Long Island

Street Address or R.F.D. Route—Dates of Residence—

Hemstead RFD 1—from 1935 to 1940

Name of City, Town, or Village—State or Foreign Country—
Kew Gardens—Long Island

Street Address or R.F.D. Route—Dates of Residence—

119-21 Met. Ave.—From 1940 to 1941

Name of City, Town, or Village—State or Foreign Country—
Brooklyn N. Y.—New York

Street Address or R.F.D. Route—Dates of Residence—

120 Kenilworth pl.—From 1941 to 1950

Name of City, Town, or Village—State or Foreign Country—
Brooklyn N. Y.—New York

Street Address or R.F.D. Route—Dates of Residence—

1650 Ocean Parkway—From 1950 to 19 ?

4. Give the name and address of your parents and indicate whether they are living or not.

Mr. Harry A. Nugent 1650 Ocean Parkway Brooklyn 23 N. Y.

Mrs. B. Nugent 535 Second st. Henderson Ky. Both parents are living. The address of my mother is temporary.

52. 5. (a) State the religious denomination or sect of your father—My Father is a Associated Bible Student

(b) State the religious denomination or sect of your mother—And my mother believes the same.

SERIES IV.—PARTICIPATION IN ORGANIZATIONS

INSTRUCTIONS:—Questions 1, 2, and 3 in this series must be fully answered. If more space is necessary, attach extra sheets of paper to this page.

1. Have you ever been a member of any military organization or establishment? If so, state the name and address of same and give reasons why you became a member.

2. Are you a member of a religious sect or organization? Yes. If your answer to question 2 is "yes," answer questions (a) through (e).

(a) State the name of the sect, and the name and location of its governing body or head if known to you.

We are a independent congregation of Associated Bible Students. Adress is 104 Clark St Bklyn N. Y. Post Office Box 225.

(b) When, where, and how did you become a member of said sect or organization?

I became a member March 13, 1945 at 104 Clark St. by baptism in water.

(e) State the name and location of the church, congregation, or meeting where you customarily attend.

Associated Bible Students, Brooklyn Ecclesia 104 Clark St
Brooklyn N. Y.

53 (d) Give the name, title, and present address of the pastor or leader of such church, congregation, or meeting.

Mr. Martin C. Mitchell Elder, 130-33 228th Street Laurelton
L. I.

(e) Describe carefully the creed or official statements of said religious sect or organization in relation to participation in war.

The official statement is inclosed.

3. Describe your relationships with and activities in all organizations with which you are or have been affiliated, other than military, political, or labor organizations.

SERIES V.—REFERENCES

Give here the names and other information indicated concerning persons who could supply information as to the sincerity of your professed convictions against participation in war.

Name—Full Address—

Mr. Bill Nichols—678 East 24th St Bklyn, 10 N. Y.

Occupation or Position—Relationship to You—

Traffic Clerk—Friend

Name—Full Address—

Mr. Ward Daisenberger—70 Jefferson St New York

Occupation or Position—Relationship to You—

Head Poter—Friend

Name—Full Address—

Mr. Michael Kelly—99-41-64 Ave Rego Park L. I.

Occupation or Position—Relationship to You—

Bldg. Supt.—Friend

54 Name—Full Address—

Mr. Bob Weiner—145 Sea Breeze Ave Bk. N. Y.

Occupation or Position—Relationship to You—

Messenger—Friend

REGISTRANT'S CERTIFICATE

INSTRUCTIONS.—1. Every registrant claiming to be a conscientious objector shall make this certificate. 2. If the registrant cannot read, the questions and his answers thereto shall be read to him by the person who assists him in completing this questionnaire. 3. If the

• registrant is unable to sign his name he shall make his mark in the space provided for his signature in the presence of two persons who shall sign as witnesses.

NOTICE.—Imprisonment for not more than five years or a fine of not more than \$10,000, or both such fine and imprisonment, is provided by law as a penalty for knowingly making or being a party to the making of any false statement or certificate regarding or bearing upon a classification. (Selective Service Law of 1948.)

I, HARRY GRAY NUGENT, certify that I am the registrant named and described in the foregoing statements in this questionnaire; that I have read (or have had read to me) the statements made by and about me, and that each and every such statement is true and complete to the best of my knowledge, information, and belief. The statements made by me in the foregoing in my own handwriting.

Registrant sign here—HARRY GRAY NUGENT.

ARTHUR KRUMPOLT

LUDLOW P. LOOMIS

55 If another person has assisted the registrant in completing this questionnaire, such person shall sign the following statement:

I have assisted the registrant herein named in preparation of this questionnaire because

One of the important items of the convention was the passing of a resolution expressing the conviction of the brethren relative to participation in war. The resolution follows:

"Whereas the Congress of the United States has enacted a conscription law and this law affects the young men of our fellowship, we in General Convention assembled at Chautauqua, Ohio, as representatives of the various Bible Student Congregations of the United States, take this opportunity to clearly state our position regarding participation in military service and training in time of peace or time of war.

"For the past sixty years the teachings of Pastor Russell in the Six Volumes of 'Studies in the Scriptures,' 'Tabernacle Shadows,' and his other writings, have and still do represent the convictions of all those in our fellowship and service.

"Our convictions are the same today as they were during World War I and World War II. We believe that we as Christians should not engage in military service and training. This conviction is based upon our belief that we are children of God, whose laws forbid participation in war.

"Further, we recognize the individuality of every Christian in the exercising of his conscience in harmony with the obligations or vows he has made to his Creator.

56 It is moved that we the Bible Students General Convention, assembled at the Miami Valley Chautauqua, Chautauqua, Ohio, August 1-8, 1948, declare the above statement is a proper expression of our conscientious convictions."

I hereby certify that I was Chairman of the Bible Students General Convention held at Chautauqua, Ohio, August 1-8, 1948; and that the resolution, declared and adopted, appearing above, is a true and correct copy of the original resolution printed in the Convention report.

G. M. WILSON,

[SEAL.]

Member,
Bible Students General
Convention Committee.

Sworn and subscribed before me this 9th day of October, 1950.

NANCY B. WASSMANN,
Notary Public of N. J.

My commission expires Sept. 28, 1955.

10/12/50.

Selective Service,
Local Board No. 41,
44 Court St., Bklyn. 2, N. Y.

DEAR SIRS:

The intent and purpose of this letter, is to make clear to you my position as a conscientious objector. If further information is required I shall be glad to see you at your convenience.

I believe, that my Lord, through St. Matthew answers your questions to my mind quite clearly. When he states in Mat. 6:24 No man can serve two masters, for either he will hate the one and 57 love the other, or else he will hold to the one and despise the other. Ye cannot serve God and Mammon;

I can not in sincerity pledge myself to any branch of the armed forces. For my allegiance is to God alone.

I can not give myself to this or any other country. For I am not my own. I am bought with a price 1 Cor. 6:19, 20.

In Rom. 12:1. The Lord admonishes us through the Apostle to consecrate our lives to him. When he says, I beseech you therefore brethren; By the mercies of God that you present your bodies a living sacrifice, Holy acceptable unto God which is your reasonable Service.

This dear Sirs, is what I have done. I have given my all to my Lord in consecration to Him.

This I believe to mean, is to lay my life down daily in his service. And to give up all earthly hopes aims and ambitions. And receive instead, the Heavenly ambitions, to give all ~~to~~ my disposal in his service.

If I were to swear an allegiance to the armed forces, I would be attempting to take from God what I have already given to him. That would be in strict violation to my conscience. For the scripture says in Luke 9:65 And Jesus said unto him, no man having put his hand to the plow and looking back, is fit for the kingdom of God I will now endeavor to cite a few of the scriptures which I believe supports me in my refusal to disobey the commandments of God given to his Church. In that we should love our enemies. This would not permit me to kill my enemies, or even injure them.

In Math. 6:43, 44 Our Lord says, ye have heard that it hath been said, Thou shalt Love thy neighbor and hate thine enemy. But I say unto you, Love your enemies, Bless them that curse you and do good to them that hate you. And pray for them which despitefully use you, and Persecute you. And also in Mat. 5:39

Our Lord states, But I say unto you, that ye resist not evil. 58 But whosoever shall smite thee on the right cheek turn to him the other also. These commandments were given to the Christian. And I, being a Christian find it impossible to ignore them. I will not kill.

My weapons are not carnal. For though we walk in the flesh. We do not war in the flesh. For the weapons of our warfair are not carnal but mighty through God to the pulling down of strong holds

2 Cor. 10:3, 4

The scriptures speak of the Lord's true Children as being Ambassadors for Christ.

2 Cor. 5:20

And as an Ambassador for Christ I could not enter into the armed forces. As an Ambassador, I represent Christ's Kingdom soon to be set on earth.

I have nothing to do with this worlds polities or wars.

My Lord said, my kingdom is not of this world. If my kingdom were of this world then would my servants fight.

John 18:36

Yours Sincerely,

H. G. NUGENT

P. S. This form was mailed to my old address and was not forwarded to me.

ASSOCIATED BIBLE STUDENTS.

POST OFFICE BOX 225, BROOKLYN, NEW YORK

Thy Word

is

truth.

SUNDAY SERVICES

Afternoons and Evenings

104 CLARK STREET

M. C. MITCHELL, Executive Secretary,
430-33 228th St., Laurelton, L. I., N. Y.MICHAEL KELLY, Recording Secretary,
99-41 64th Ave., Rego Park, L. I., N. Y.STUART LIVERMORE, Treasurer
93 Kissam Ave., Oakwood Heights, S. I., N. Y.

November 14, 1948

The following Resolution was adopted by the independent congregation of Associated Bible Students meeting at 104 Clark Street, Brooklyn, New York on November 14, 1948:

RESOLVED that our position relative to the Selective Training and Service Act of 1940 is also our position relative to the Selective Service Act of 1948; and that we hereby again go on record with the proper governmental authorities and declare:

THAT as Consecrated Christians, "obedient to the powers that be", insofar as such obedience does not conflict with the teachings of the Bible, particularly as expressed in the words of Jesus and his Apostles, which we understand to be against the Christian's participation in war;

60 WE DO HEREBY request that those of us who conscientiously feel bound to refuse military service of any description be exempted as conscientious objectors from such training as provided for in Section 8(j) of the Selective Service Act of 1948.

Respectfully submitted,

ASSOCIATED BIBLE STUDENTS

104 Clark St., Brooklyn, N. Y.

MICHAEL J. KELLY,

Secretary

Signatures of Elders of the Congregation:

PANTEL HATGIS.

64 NEW YORK CITY HEADQUARTERS

SELECTIVE SERVICE SYSTEM

350 Fifth Avenue

New York 1, N. Y.

Refer to file

12-23-41

February 23, 1951

Selective Service System
Local Board 40
850 Flatbush Avenue
Brooklyn, N. Y.

Selective Service System
LOCAL BOARD NO. (40)
FEB 26 1951
850 Flatbush Avenue
Brooklyn 26, N. Y.

Subject: Harry C. Nugent
SS No. 50 40 29 474

DEAR SIRS:

This has reference to your letter dated February 16, 1951 requesting information as to whether the Associated Bible Students Organization which sponsors the above registrant's claim as a conscientious objector is recognized.

The records at this Headquarters disclose that under date of January 8, 1949, we received a letter from the above organization which is quoted for your information and guidance:

"The following resolution was adopted by the independent congregation of Associated Bible Students, meeting at 104 Clark St., Brooklyn, N. Y. on November 14, 1948:—

"Resolved that our position relative to the Selective Training and Service Act of 1940 is also our position relative to the Selective Service Act of 1948; and that we hereby again go on record with the proper governmental authorities and declare:

65 "That as Consecrated Christians, "obedient to the powers that be"; insofar as such obedience does not conflict with the teachings of the Bible, particularly as expressed in the words of Jesus and his Apostles, which we understand to be against the Christian's participation in war:

"We do hereby request that those of us who conscientiously feel bound to refuse military service of any description, be exempted as

UNITED STATES OF AMERICA vs. HARRY GRAY NUGENT

conscientious objectors from such training as provided for in section 6(j) of the Selective Service Act of 1948.

"Respectfully submitted,

ASSOCIATED BIBLE STUDENTS,

104 Clark St., Brooklyn, N. Y.

(S.) MICHAEL J. KELLY,

Secretary.

"Signatures of Elders of Congregation

Pantel Hatgis

Arthur Krumpolt

W. J. Hollister

L. H. Nopby

W. N. Woodworth

Ludlow P. Loomis

Roy E. Mitchell

Martin C. Mitchell

Fred Mundell

Henry E. Anderson

Felix S. Wassermann

Fred Bright"

For the New York City Director

PAUL AKST

Major, USAF

Chief, Manpower & Operations Division.

Series of Papers, of Which Report of Hearing Officer and Letter of Special Assistant to Attorney General Are Printed

Copy

REPORT OF HEARING OFFICER OF THE DEPARTMENT OF JUSTICE
PURSUANT TO SECTION 6 (J) OF THE SELECTIVE SERVICE ACT OF
1948

In re: Harry Gray Nugent—Conscientious Objector. S. S. No.
50-40-29-474.

Appeal from:

Local Board No. 40—(44 Court Street, Brooklyn, N. Y.)
Appeal Board Panel #2.

United States Attorney
Eastern District of New York:

HONORABLE FRANK J. PARKER,
Hearing-Officer:

THOMAS O'ROURKE GALLAGHER, Esq.

STATEMENT

The registrant, HARRY GRAY NUGENT, of #1650 Ocean Parkway, Brooklyn, New York, was born in Manhattan, New York City, on August 4, 1929, and at present he lives with and assists his father, the latter being superintendent of the building above mentioned on Ocean Parkway. The registrant claims he and his parents are Associate Bible Students, located at #104 Clark Street, Brooklyn, where they rent space from the Swedenborgen Church, and now claims to be a Conscientious Objector.

In his Questionnaire under Statement re Classification, registrant stated: "Do to religious beliefs I will only serve as a non-combatant" (spelling his).

For a young man who had one and one-half years of High School, he is exceedingly illiterate. His spelling is inexcusable.

The Associated Bible Students, of which registrant claims to be a member, is a group which broke away from Jehovah's Witnesses, when Pastor Russell died in 1919. This death, of course, occurred ten years before the birth of this registrant. Apparently each member is entitled to his own belief. Registrant's belief seems to be a free and particularly easy belief and religion, calling for little effort and practically no sacrifice.

As to his sincerity, the references he produced failed to make favorable impression, and most of them were conscientious objectors themselves or members of the same Bible Society.

From the impressions gleaned as to this registrant, he is apparently shiftless, lazy, somewhat of a moral weakling—has unusual motion in walking, talking and other mannerisms which give him the appearance of being somewhat if not definitely effeminate.

In all events, this registrant definitely has not qualified as a Conscientious Objector as to church affiliations, religious beliefs, or any statements or affirmative actions which were attested to by anyone on his behalf, made prior to the national emergency, and it is believed that his present claims are not founded on truth in fact.

The registrant, in my opinion, has failed totally to sustain his claim for total deferment as a Conscientious Objector. I believe he should be classified 1-A.

However, his Local Draft Board put him in 1-A-O on his own statement on page 7 of his classification questionnaire, to wit: "Do to religious beliefs I will only serve as a noncombatant" (spelling that of registrant).

Your Hearing Officer will follow this ruling of Local Draft Board.

RECOMMENDATION

That Registrant be retained in Class 1-A-O.

Respectfully submitted,

(S.) THOMAS O'ROURKE GALLAGHER,
Hearing Officer.

Dated December 6, 1951.

68 WASHINGTON, D. C.

January 24, 1952.

Chairman, Appeal Board; New York City,
Eastern District of New York,
Selective Service System,
44 Court Street,
Brooklyn 2, New York.

Re: Harry Gray Nugent
Selective Service No.
50-40-29-474
Local Board No. 40
Brooklyn, New York.

DEAR SIR:

After review of the entire file and record, the Department of Justice recommends to your Board that the appeal in the above mentioned case, so far as it concerns the question of conscientious objection to participation in war, be sustained as to combatant military service only, and the registrant if inducted into the land or naval forces be assigned to noncombatant duties.

As required by Section 6(j) of the Universal Military Training and Service Act, an inquiry was made in this case and an opportunity to be heard on his claim for exemption as a conscientious objector was given to the registrant by Honorable Thomas O'Rourke Gallagher, Hearing Officer for the Southern and Eastern Districts of New York. His report and a copy of the transcript of hearing are enclosed. There is also returned the Selective Service Cover Sheet in the above case.

The investigative report shows that the registrant is a religious person and attends church regularly. There is some indication in the report that the registrant is inclined to be lacking in ambition, however, his employment record is satisfactory. A number of persons interviewed, not members of the sect to which the registrant belongs, indicated that the registrant is a courteous, quiet, sober individual, who is sincerely interested in his religion. Registrant's claim for exemption from noncombatant service is not sustained because he failed to establish that because of his religious training and belief he is conscientiously opposed to participation in training and service in a noncombatant capacity. In this connection, attention is also invited to the registrant's statement regarding his classification, which appears on his SSS Form No. 100.

Sincerely,

*S. OSCAR SMITH,
Special Assistant to the Attorney General.*

70

GOVERNMENT'S EXHIBIT 2-L

NEW YORK CITY HEADQUARTERS

SELECTIVE SERVICE SYSTEM

205 East Forty-Second Street
New York 17, N. Y.

February 12, 1952

Refer to File

10:kh

Selective Service System
LOCAL BOARD NO. (40)FEB. 13, 1952
850 Flatbush Avenue
Brooklyn 26, N. Y.

Mr. Harry Gray Nugent,
83-33 Austin Street,
Kew Gardens, New York.

SS No. 50-40-29-474

DEAR MR. NUGENT:

This will acknowledge receipt of your Special Delivery letter dated February 9th, which arrived this morning.

I have been over your file and feel it would serve no useful purpose for me to interview you. You have been granted all your procedural rights and your order for induction must stand.

Sincerely yours,

CANDLER COBB,
New York City Director.

CC:L.B. 40.

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GOVERNMENT'S EXHIBIT 3

Photostat Letter

February 9, 1952.

Colonel Cobb,
United States Army,
Selective Service Division.

DEAR SIR:

I was advised by your secretary, the best way of contacting you, would be through the mail.

I called your office, on the eighth of this month, to inquire of the possibility of my having a personal interview with you. The rea-

son I desired this interview is, I am a Conscientious Objector, and I am due for induction on the twenty first of this month.

I felt, if I had the opportunity of seeing you personally, you would understand why I believe my case is worthy of your consideration.

I have held the classification of 1A-O since Feb. 5th, 1951, and have now received a new classification card on Feb. 6th, 1952 with the same classification. In Feb. 1951, I appeared before my local board, number 40, for a Hearing, to change my classification from 1-A, to 4-E. The local board did not grant me a 4-E classification, but they did reclassify me to 1A-O.

Why I believe they would not grant me a 4-E classification, which I now understand has been changed to 1-O, was because in 1948 when I received my first questionnaire, after I registered, in that questionnaire, I requested the conscientious Objectors Form, and I stated I was willing to take noncombatant service. At that time I was sincere in believing that noncombatant service, would not conflict with the religious teachings, I then understood.

72 Though I was raised in my religion, and though my great grand parents, and grandparents, held to the same beliefs that I hold to to-day, I did not take any studious interest or consecrate my life to my Heavenly Father, until about three years before I received my first questionnaire.

After I sent in my first questionnaire in 1948, I did not receive my conscientious Objectors Form, until after the outbreak of the Korean conflict. A good time elapsed between the mailing of my first Form, and the Korean Police action. A good amount of time also, for me to further my studies in the scriptures, and to learn more of what God expects of His children who claim consecration to Him.

Quite some time before I received my conscientious Objectors Form, I realized that I no longer could, in sincerity, maintain the position I took as far as noncombatant service was concerned. For my studies in the scriptures revealed to me, that the position I had taken would not be in accordance with the teachings of Christ of whom I wish to be a footstep follower.

When I finally received my Conscientious Form, and asked for a 4-E classification, when formally I said I would accept noncombatant service, and with the Korean battle in full swing, my request may have appeared a bit ambiguous.

Perhaps the members of my local board, failed to grasp the fact that my faith and knowledge, is progressive, for it is stated in Isiah 28:10th verse, "For precept must be upon precept, precept upon precept, line upon line, line upon line, here a little, there a little." The apostle Peter also shows that the christian faith is not static but progressive when he states in 2nd Peter 5:7 "And besides this, giving all diligence, add to your faith, virtue, and to virtue knowledge. And to Godliness, brotherly kindness, charity."

And so my faith is progressive, and as my knowledge increases my responsibility to God increases, and my conscience could 73 not allow me to do the things I might have done when my knowledge was less.

When my local board rejected my 4-E request, I then appealed to the Appeal board.

On July 18th, 1951, I received my notice of Hearing, and also instructions to registrants whose claims for exemption as conscientious objectors have been appealed. In the instructions, I was informed, that "Upon request therefor, by the registrant, at any time after receipt by him, of the notice of Hearing and Hearing officer, will advise the registrant, as to the general nature and character of any evidence in his possession which is unfavorable to, and tends to defeat the claim of the registrant, such request being granted to enable the registrant more fully to prepare to answer and refute at the Hearing, such unfavorable evidence." I took advantage of this clause and visited the office of Mr. Thomas O'Rourke Gallagher who was my Hearing officer. When I arrived at his office I was informed by his secretary, that he was away on a vacation. I then told his secretary that I came to find out if there was any evidence that Mr. Gallagher may have in his possession which would tend to defeat my appeal for 4-E classification. His secretary informed me, that all of the information gathered by the F.B.I. on my case, was very favorable and that I should have no trouble in obtaining my desired classification. In my instruction Form, it was also stipulated, that I could bring an advisor. Mr. Gallaghers secretary informed me that that, would not be necessary because of the evidence in my favor. I reported for the Hearing, on July 17, 1951. It was on my instruction sheet that my Hearing would be of a non-legalistic nature. I appeared before Mr. Gallagher. He had me swear to tell the whole truth and nothing but the truth. I am not adverse to swearing to tell the truth, but it did not appear to me to be non-legalistic. On my instruction sheet I was informed that I would be permitted to a full and complete presentation of

74 my claim. This I was not permitted to do. I had to answer all Mr. Gallaghers questions with Yes. or No. The only exception to this, was at the beginning of my Hearing, and then I was allowed to say very little. Mr. Gallaghers Stenographer, recorded with pencil, all that was supposed to have been said. But there were many more questions Mr. Gallagher asked me, that required more than one word reply, and generally if my reply did exceed more than one or two words, he would have his stenographer strike it from the record. In this Hearing, I feel that I was not allowed to give a full presentation of my claims.

I do not know just why Mr. Gallagher refused to give me a 4E classification. If there were any adverse evidence to defeat my

claims, then I feel that I should have been informed of it when I visited his secretary.

I feel that this Hearing was not a fair one, and so I write to you Sir, in hopes that you may consider my case and bring it to the attention of the State Authorities.

The vote of my local board was three to nothing against me. Though the decision of the board is against me, it does not alter my convictions in any way.

You see Sir, I am sincerely trying to obey my Lord's Commandments that were given to us in the Sermon On The Mount. I must obey His commandments no matter what the consequences may be.

My religious affiliations are with the Associated Bible Students. We meet Sundays at 104 Clark Street, Brooklyn, N. Y. where my Father is a Deacon. We also meet in the homes of the Bible Students, during the week. I try to attend most all of these meetings.

In my files you will find a more detailed account of what Scriptures I base my conscientious objections to participation in the Armed Services. I am also inclosing a document on which I have based some of my conclusions.

My Selective number is 50-40-29-474.

75 My Local Board number is (40) 850 Flatbush Ave., Brooklyn.

Thanking you for your kind attention,

I am respectfully yours,

HARRY GRAY NUGENT.

Harry Gray Nugent

83-33 Austin Street

Kew Gardens, N. Y.

Quotation from Zion's Watch Tower, September 1, 1915

CHRISTIAN DUTY AND THE WAR

In Scripture Studies, Vol. VI, we have set forth a suggestion that the followers of Christ seek by every proper means to avoid participation in war. We there suggested the possibility, but that in the event of conscription the Lord's followers should use all their influence toward obtaining positions in the Hospital Corps or in the Provision Department of the army, rather than in the actual warfare. We suggested further that if it were impossible to avoid going into the trenches, it would still not be necessary to violate the divine requirement, "Thou shalt do no murder."—Matthew 19:18.

We have been wondering since if the course we have suggested is the best one. We wonder if such a course would not mean com-

promise. We reflect that to become a member of the army and to put on the military uniform implies the duties and obligations of a soldier as recognized and accepted. A protest made to an officer would be insignificant—the public in general would not know of it. Would not the Christian be really out of his place under such conditions?

76 "But," some one replies, "If one were to refuse the uniform and the military service he would be shot."

We reply that if the presentation were properly made there might be some kind of exoneration; but if not, would it be any worse to be shot because of loyalty to the Prince of Peace and refusal to disobey his order than to be shot while under the banner of these earthly kings and apparently giving them support and, in appearance at least, compromising the teachings of our heavenly King? Of the two deaths we would prefer the former—prefer to die because of faithfulness to our heavenly King. Certainly the one dying for his loyalty to the principles of the Lord's teachings would accomplish far more by his death than would the one dying in the trenches. We cannot tell how great the influence would be for peace, for righteousness, for God, if a few hundred of the Lord's faithful were to follow the course of Shadrach, Meshach, and Abednego, and refuse to bow down to the god of war. Like those noble men they might say, "Our God is able to deliver us, if he chooses so to do; but if he does not choose to deliver us, that will not alter our course. We will serve him and follow his direction, come what may."

Those Hebrews of the past cast into the fiery furnace because of their faithfulness to God, but afterwards delivered, are a noble example. Indeed, the millions of soldiers enduring terrible privations through loyalty to earthly kings during the present great war are wonderful examples and illustrations. May not the soldiers of Christ well say to themselves, "If the ancient worthies knew God only partially, yet were so faithful to Him; and if these earthly soldiers are so faithful to earthly kings, what manner of persons ought we to be who have come into the family of God by the spirit of begetting, who have entered the school of Christ, who are being guided and led by the Captain of our Salvation, and who have his exceeding great and precious promises in respect to our 77 eternal future! How should we stand for him and for his teachings? Could we lay down our lives in a better way than by faithfulness to the King of kings and Lord of lords, our redeemer and Head?"

We are not urging this course. We are merely suggesting it. The responsibility fully belongs with each individual. We are discharging our responsibility toward many Bible students who are inquiring of us respecting the mind of the Lord on this subject. We gave them our best thought previously, but now fear that we were too

conservative. We always advocate conservatism, in the sense of not rushing into difficulties simply because they are difficulties and would mean trouble. But we do advocate that, while seeking to avoid trouble and to live peaceably with all men, where duty calls, or danger; we should not be wanting there.

(Written in 1915)

DEFENDANT'S EXHIBIT "A"

OFFICE OF THE ATTORNEY GENERAL

INSTRUCTIONS TO REGISTRANTS WHOSE CLAIMS FOR EXEMPTION AS
CONSCIENTIOUS OBJECTORS HAVE BEEN APPEALED

2. Upon request therefor by the registrant at any time after receipt by him of the notice of hearing and before the date set for the hearing, the hearing office will advise the registrant as to the general nature and character of any evidence in his possession which is unfavorable to, and tends to defeat, the claim of the registrant such request being granted to enable the registrant more fully to prepare to answer and refute at the hearing such unfavorable evidence.

78. 3. At the hearing by the hearing officer of the Department of Justice, the registrant will be permitted to make a full and complete presentation of his claim. He may bring with him to the hearing as witnesses any persons who have personal knowledge of facts concerning his religious training and belief and concerning the character and good faith of his objections to participation in war in any form.

5. The hearing will not be in the nature of a trial of judicial proceeding, but will be informal and non-legalistic. Registrants will not be required to adhere to the ordinary rules of evidence. It will not be necessary for the registrant to be represented at the hearing by an attorney. The registrant may bring with him a relative or friend or other adviser, who may sit with him at the hearing. Such person, whether an attorney or not, will not be permitted to object to questions or make any argument concerning any evidence or any phase of the proceeding. The hearing will at all times be under the direction and control of a duly designated hearing officer, who may terminate the proceeding upon the violation of these instructions by the registrant or his adviser.

79 In United States District Court for the Southern District of New York

No. 37/349

UNITED STATES OF AMERICA

v.

HARRY GRAY NUGENT

JUDGMENT AND COMMITMENT—Filed April 21, 1952

On this 21st day of April, 1952 came the attorney for the government and the defendant appeared in person and by counsel.

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a finding of guilty by the Court (Jury waived) of the offense of unlawfully failing and neglecting to take one step forward; after it had been determined that he was fully qualified for induction into the armed forces of the United States. Title 50 App. Sec. 462 U. S. Code as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two and one-half years.

80 IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

EDWARD WEINFELD,
United States District Judge.

Clerk.

In United States District Court

[Title omitted]

NOTICE OF APPEAL—Filed April 25, 1952

Harry Gray Nugent, the above named defendant, hereby appeals to the Court of Appeals for the Second Circuit from a judgment entered by this Court on the 21st day of April 1952, committing the defendant to the custody of the Attorney General for a period of

two and one-half years, as a result of a conviction for the offense of refusing to take one step forward for induction into the armed forces of the United States in violation of 50 U. S. C. 462.

Dated April 25, 1952.

HERMAN ADLERSTEIN,
Attorney for Defendant,
79 Wall Street,
New York 5, N. Y.

In United States District Court

[Title omitted]

STIPULATION AS TO CONTENTS OF THE RECORD ON APPEAL—May 29, 1952

The appellant herein and his counsel have represented and hereby represent to the appellee:

(1) That this transcript of the record contains all matter necessary fairly to present their points and such points as are relevant in reply.

(2) That in so far as the transcript of record purports to contain the stenographic minutes of proceedings, the minutes are set forth accurately, and omissions, if any, are clearly marked. Such omissions are only of matter wholly immaterial to any question raised on this appeal.

(3) That all exhibits are accurately reprinted, except those specified, namely:

Government's Exhibits.

2a—only page three printed.

2C, 2D, 2E, 2G, 2I, 2J (that part of which are the minutes of Hearing before T. O'R. Gallagher) 2K.

Defendant's Exhibit.

Omitted, except clauses 2, 3, & 5 and heading.

And that the above exhibits are omitted, except as specified.

(4) That the transcript of the record contains all matters required to be set forth by applicable rules.

In reliance upon these representations it is hereby stipulated and agreed by the undersigned that the foregoing is a true copy of the transcript of record of the District Court for the Southern District of New York in the above entitled matter as agreed on by the parties, and further, that all the exhibits pertaining to this cause not reproduced herein, may be submitted to the Court upon the argu-

ment of the appeal, with the same force and effect as if reproduced herein and, further, if it should appear to the appellee that matter properly a part of the transcript of record has been omitted and has become material, despite the representations herein made, the appellee may, at its option, reprint such matter as an appendix to its brief or may require the appellant to reprint such matter, and use such matter with the same force and effect as if reproduced herein.

Dated May 20, 1952.

MYLES J. LANE,

United States Attorney,

Attorney for Plaintiff-Appellee.

HERMAN ADLERSTEIN,

Attorney for Defendant-Appellant.

83 Clerk's Certificate to foregoing transcript omitted in printing.

84 In United States Court of Appeals for the Second Circuit,
October Term, 1952

No. 28

Argued October 7, 1952

Docket No. 22385

UNITED STATES OF AMERICA, APPELLEE

v.

HARRY GRAY NUGENT, APPELLANT

Before THOMAS W. SWAN, *Chief Judge*, and L. HAND and FRANK,
Circuit Judges

Appeal from a judgment of conviction by the United States District Court for the Southern District of New York, Weinfeld, *Judge*:
REVERSED.

MYLES J. LANE (Daniel H. Greenberg, of counsel), *for appellee*;
HERMAN ADLERSTEIN, *for appellant*.

OPINION—Decided November 10, 1952

Answering a questionnaire sent him by his local draft board, defendant stated that he was a conscientious objector but would accept non-combatant service. Some twenty months later, in 85 a form sent him by that board, he first stated that he could no longer accept non-combatant service because of the progress

of his religious beliefs. The local board originally classified him 1-A; but, when he filed the second form, and after a hearing before the board, it classified him I-A-O.¹ He appealed. Pursuant to the statute and regulations, the Appeal Board referred the defendant's claim to the Department of Justice for inquiry and hearing. After an inquiry, the F.B.I. made a report. Subsequently, Gallagher, a hearing officer for the Department of Justice, held a hearing at which defendant appeared and was questioned. At this hearing, Gallagher did not refer to the F.B.I. report or any of its contents. He made a report and recommended that the defendant "be retained in Class I-A-O". Smith, a Special Assistant to the Attorney General, after reviewing the "entire file and record," recommended that defendant's claim for exemption from non-combatant service be denied.² The Appeal Board having before it the Selective Service file, including the recommendations and reports of Gallagher and Smith, voted to continue defendant's classification in Class I-A-O.³ He was subsequently ordered to report for report for induction as a non-combatant. He reported, completed his physical examination, and, when found acceptable, refused to take the symbolic "one step forward" which would have constituted his induction into the armed forces. He was then arrested and indicted for violation of 50 U. S. C. (1946 ed. Supp. III) § 462.

Section 451 of this Act reads in part: "(e) The Congress further declares that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy."

Section 456(j)⁴ reads in part: "Nothing contained in this title shall be construed to require any person to be subject to combatant

¹ Under the Regulations, this class includes every registrant who would have been classified in Class 1-A (available for military service) but for the reason that he has been found, by reason of religious training and belief, to be conscientiously opposed to combatant training and service in the armed forces.

² In his original brief, defendant argued that Smith had not seen the F.B.I. report. Smith's report to the Appeal Board says, "The investigative report shows * * *". The government in its brief argues that this means that Smith had before him the F.B.I. report. Defendant in his reply brief says, "If the report of * * * Smith meant to refer to the F.B.I. report, when it mentioned the investigative report, then appellant withdraws that point. * * *". We think it did mean to refer to the F.B.I. report.

³ It is not clear that the F.B.I. report was before the Appeal Board.

⁴ 50 U. S. C. (1946 ed. Supp. V).

training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. * * * Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The

Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service, as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board * * * [to] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate. * * * If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board."

Pertinent parts of the Regulations—32 CFR (1951 Rev. ed.) § 1626.25—read as follows:

"(a) If an appeal involves the question whether or not a registrant is entitled to be sustained in his claim that he is a conscientious objector, the appeal board shall take the following action: * * *

"(4) If the appeal board determines that such registrant is not entitled to classification in either a class lower than Class I-O or in Class I-G, it shall transmit the entire file to the United States Attorney for the judicial district in which the office of the appeal board is located for the purpose of securing an advisory recommendation from the Department of Justice.

"(b) No registrant's file shall be forwarded to the United States Attorney by any appeal board and any file so forwarded shall be returned, unless in the 'Minutes of Action By Local Board and Appeal Board' on the Classification Questionnaire (SSS Form No. 100) the record shows and the letter of transmittal states that the appeal board reviewed the file and determined that the registrant should not be classified in either Class I-A-O or Class I-O under the circumstances set forth in paragraph (a) (2) or (4) of this section.

"(c) The Department of Justice shall thereupon make an inquiry and hold a hearing on the character and good faith of the conscientious objections of the registrants. The registrant shall be notified of the time and place of such hearing and shall have an opportunity to be heard. If the objections of the registrant are found to be sustained, the Department of Justice shall recommend to the appeal board (1) that if the registrant is inducted into the armed forces, he shall be assigned to noncombatant service, or (2) that if the registrant is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of induction be ordered by his local board to perform for a period of twenty-four consecutive months civilian work contributing to the maintenance of the national health, safety or interest. If the Department of Justice finds that the objections of the registrant are not sustained, it shall recommend to the appeal board that such objections be not sustained.

"(d) Upon receipt of the report of the Department of Justice, the appeal board shall determine the classification of the registrant, and in its determination it shall give consideration to, but it shall not be bound to follow, the recommendation of the Department of Justice. * * *

89 FRANK, *Circuit Judge*:

At the hearing held by the hearing officer, he did not mention the F. B. I. investigative report; nor did he give a summary of its contents or reveal the names of the persons who supplied the data described in the report. After defendant's indictment, before and at the trial the prosecutor refused to produce that report, on the ground that it was "confidential." See *U. S. ex rel. Teiuh v. Ragen*, 340 U. S. 462.¹⁴ When a prosecutor thus withholds such matter, the government must take the consequences,² which here come to this: Not having access to the report, the trial court and this court must

¹⁴ Cf. *Bowman Dairy Co. v. U. S.*, 341 U. S. 214.

² See *U. S. v. Andolschek*, 142 F. (2d) 503, 506 (C. A. 2); *U. S. v. Krulewitch*, 145 F. (2d) 76, 78-79 (C. A. 2); *U. S. v. Beekman*, 155 F. (2d) 580, 584 (C. A. 2); *U. S. v. Grayson*, 166 F. (2d) 863, 870 (C. A. 2).

assume that it contained matter gravely adverse to the defendant.³ To be sure, the defendant did not make a request, pursuant to the following provision contained in the "Instructions" issued by the Office of the Attorney General:⁴ "Upon request therefor by the registrant at any time after receipt by him of the notice of hearing and before the date set for the hearing, the hearing officer will advise the registrant as to the general nature and character of any evidence in his possession which is unfavorable to, and tends to defeat, the claim of the registrant, such request being granted to enable the registrant more fully to prepare to answer and refute at the hearing such unfavorable evidence." But even if defendant had made the request, the divulged information would not have afforded him adequate opportunity "to prepare to answer and refute at the hearing such unfavorable evidence." For that information would not have disclosed the identity of the witnesses who gave such "evidence," and thus would not have put defendant in position to interrogate or impeach those witnesses. Accordingly, we think the hearing before the hearing officer violated the statute, for the reasons admirably stated by Judge Hincks in *United States v. Geyer*, 12 F. Supp. 2d, Referring to § 456(j),⁵ which provides that on an appeal by a registrant claiming classification as a conscientious objector, the "Department of Justice after appropriate inquiry shall hold a hearing" upon notice to the registrant. Judge Hincks said: "The natural import of this provision is, I think, that the investigative report resulting from the inquiry shall be made a part of the record for consideration by all directly concerned with the classification. Under the contemplated procedure the registrant has already had an opportunity before the draft board to put everything desired into the record. That being so there would be no point to notify him to appear in the departmental hearing just to put in more evidence. Thus, by elimination, the only useful purpose of notice at that stage was to give the registrant opportunity to meet the contents of the report. And if such was the underlying purpose, the inference is required that the Act envisaged that the investigative report should be made a part of the departmental report and go forward in its entirety for

³ Smith, the Special Assistant to the Attorney General, in his letter to the Appeal Board, stated that "there is some indication in the [F. B. I.] report that the registrant is inclined to be lacking in ambition; however, his employment record is satisfactory." It may be that far more damaging statements are contained in the F. B. I. report.

⁴ It is entitled, "Instructions to Registrants Whose Claims For Exemption As Conscientious Objectors Have BeenAppealed."

⁵ 50 U. S. C. (1946 ed. Supp. V).

the appeal board to scan and evaluate. Furthermore, the Act (same section) provides that the board 'shall in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department.' * * * This clearly imports that the board shall evaluate the worth of the recommendation which is a task impossible of fulfillment unless the board has access to the entire record on which the recommendation is based. Congress was not using empty words when in Sec. 451 of the Act it solemnly declared 'that in a free society the obligations and privileges of serving in the armed forces and the reserve components thereof should be shared generally, in accordance with a system of selection which is fair and just, and which is consistent with the maintenance of an effective national economy.' A system in which selections might be made in uninformed reliance upon the recommendation of an executive officer bottomed perhaps on secret police reports, would indeed make a mockery of that high declaration of policy. Only if the Act be construed to require that the investigative reports shall become a part of the record open to the appeal board and all concerned is the 'system of selection—just and fair' within our Anglo-Saxon concepts of justice and due process.⁵

It is true that in the *Geyer* case the Appeal Board's request for the FBI report was refused by the Assistant Attorney General. However, Judge Hincks, having referred to the fact that "the defendant at no stage had seen the report" although the defendant had never asked for it, said that the statute must be construed to require that the investigative reports shall become part of the record open to the appeal board and all concerned, thus obviously including the defendant.

Because, as Judge Hincks points out, the statute calls for a hearing "after appropriate inquiry," we think that it was essential that the FBI report, which results from that inquiry, should have been disclosed to the defendant before or at that hearing held by the hearing officer. Since he was a layman not represented by a lawyer, it is of no significance that he did not ask for the report. Nor is it significant that he did not ask the hearing officer to advise him, pursuant to the "Instructions" concerning "the general nature and character of any evidence" * * * "unfavorable" to his claim, for, to repeat, such advice would not have put him in a position to interrogate or impeach the witnesses who gave such testimony. We are not to be understood as deciding whether, if the statute provided that such a report should not be disclosed, it would

⁵ In *United States v. Geyer*, as here, the defendant had not asked to see the F. B. I. report at or before the hearing held by the hearing officer.

be unconstitutional. Cf. *Imboden v. United States*, 194 F. (2d) 508, 513 (C. A. 6).

Even if the F. B. I. report were favorable to the defendant, it may well be that the statute required that it be disclosed to him at or before the hearing held by the hearing officer. Cf. *Griffin v. United States*, 183 F. (2d) 990, 993 (App. D. C.), where the court said that "the case emphasizes the necessity of disclosure by the prosecution of evidence that may reasonably be considered admissible and useful to the defense."⁶ True, the hearing here was not a criminal trial. But its effects on defendant might be fully as important.

We deem it appropriate to quote, as apposite here, Judge Hinck's closing remarks in *Geyer's* case: "While, of course, the verdict of acquittal is a final determination of the pending charge based, as I hold, on an illegal classification, nothing in the Constitution or the Act precludes further proceedings under the Selective Service System or a successful prosecution for refusal to comply with an order for induction based upon another, and valid, order of classification, if any such shall be made."

REVERSED.

93 In United States Court of Appeals for the Second Circuit

UNITED STATES, PLAINTIFF-APPELLEE,

v.

HARRY GRAY NUGENT, DEFENDANT-APPELLANT

JUDGMENT—Filed November 10, 1952.

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

ALEXANDER M. BELL,
Clerk.

By A. DANIEL FUSARO,
Deputy Clerk.

⁶Cf. *United States ex rel. Montgomery v. Rayen*, 86 F. Supp. 382, 387 (D. C. Ill.).

64 UNITED STATES OF AMERICA VS. HARRY GRAY NUGENT

94 [File endorsement omitted.]

95-96 Clerk's Certificate to foregoing transcript, omitted in printing.

97-98 [File endorsement omitted]

SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI
—Filed December 5, 1952.

Upon consideration of the application of counsel for petitioner, It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including January 9, 1953.

ROBERT H. JACKSON,
Associate Justice of the Supreme
Court of the United States.

Dated this 5th day of December, 1952.

99 SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

[Title omitted]

No. 540

ORDER ALLOWING CERTIORARI—Filed March 16, 1953

The petition herein for a writ of Certiorari to the United States Court of Appeals for the Second Circuit is granted, and case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.